



# Federal Register

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# Presidential Documents

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Proclamation 8269 of June 6, 2008

The President

Flag Day and National Flag Week, 2008

By the President of the United States of America

## A Proclamation

The American flag has been our national symbol for 231 years, and it remains a beacon of freedom wherever it is flown. Since the Second Continental Congress adopted the Stars and Stripes as our flag in 1777, it has stood for freedom, justice, and the resolve of our Nation.

When Francis Scott Key saw the American flag flying over Fort McHenry in 1814, he believed that liberty would triumph. The flag that inspired Key to write our National Anthem still energizes and emboldens the American spirit today. As our Nation faces the challenges of a new era, Old Glory reminds us that liberty can prevail over oppression.

Since the first days of our Republic, Americans have flown the flag to show their pride and appreciation for the freedoms they enjoy in this great Nation. Every day, Americans pledge their allegiance to the flag of the United States, and our troops carry it before them as they defend the liberties for which it stands.

On Flag Day and during National Flag Week, we remember those in uniform whose courage and sacrifice inspire us here at home. We also remember the rich history of one of our oldest national symbols and reflect on our duty to carry our heritage of freedom into the future.

To commemorate the adoption of our flag, the Congress, by joint resolution approved August 3, 1949, as amended (63 Stat. 492), designated June 14 of each year as “Flag Day” and requested that the President issue an annual proclamation calling for its observance and for the display of the flag of the United States on all Federal Government buildings. The Congress also requested, by joint resolution approved June 9, 1966, as amended (80 Stat. 194), that the President issue annually a proclamation designating the week in which June 14 occurs as “National Flag Week” and calling upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim June 14, 2008, as Flag Day and the week beginning June 8, 2008, as National Flag Week. I direct the appropriate officials to display the flag on all Federal Government buildings during that week, and I urge all Americans to observe Flag Day and National Flag Week by flying the Stars and Stripes from their homes and other appropriate places. I also call upon the people of the United States to observe with pride and all due ceremony those days from Flag Day through Independence Day, also set aside by the Congress (89 Stat. 211), as a time to honor America, to celebrate our heritage in public gatherings and activities, and to publicly recite the Pledge of Allegiance to the Flag of the United States of America.



IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of June, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-second.

A handwritten signature in black ink, appearing to be "GWB", written in a cursive style.

[FR Doc. 08-1346

Filed 6-10-08; 8:45 am]

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# Rules and Regulations

Federal Register

Vol. 73, No. 113

Wednesday, June 11, 2008

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2008-0292; Directorate Identifier 2007-NM-286-AD; Amendment 39-15550; AD 2008-12-07]

RIN 2120-AA64

**Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-135BJ and EMB-145XR Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It has been found that in case of fuel leakage inside the conduit used to route the clear ice detector wiring through the wing fuel tank, it is possible to have fuel accumulation inside the conduit due to application of wiring protection sealant in the conduit end. The absence of fuel leakage detectability into the clear ice detector wiring conduit, associated with an ignition source, could result in fire or explosion inside the tank.

We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective July 16, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 16, 2008.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Sanjay Ralhan, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1405; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 13, 2008 (73 FR 13494). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

It has been found that in case of fuel leakage inside the conduit used to route the clear ice detector wiring through the wing fuel tank, it is possible to have fuel accumulation inside the conduit due to application of wiring protection sealant in the conduit end. The absence of fuel leakage detectability into the clear ice detector wiring conduit, associated with an ignition source, could result in fire or explosion inside the tank.

Corrective action includes removing the sealant used to protect the wiring conduits of the left- and right-hand clear ice detectors at the holes through the wing spars, and installing protective Teflon spiral around the wiring. You may obtain further information by examining the MCAI in the AD docket.

##### Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

##### Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

#### Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a Note within the AD.

#### Costs of Compliance

We estimate that this AD will affect about 142 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$80 per work-hour. Required parts cost will be negligible. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$34,080, or \$240 per product.

#### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

## Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

## Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

**2008-12-07 Empresa Brasileira De Aeronautica S.A. (EMBRAER):**  
Amendment 39-15550. Docket No. FAA-2008-0292; Directorate Identifier 2007-NM-286-AD.

## Effective Date

(a) This airworthiness directive (AD) becomes effective July 16, 2008.

## Affected ADs

(b) None.

## Applicability

(c) This AD applies to EMBRAER Model EMB-135BJ and EMB-145XR airplanes, certificated in any category, as identified in EMBRAER Service Bulletins 145-30-0048 and 145LEG-30-0015, both dated March 31, 2006.

## Subject

(d) Air Transport Association (ATA) of America Code 30: Ice and Rain Protection.

## Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It has been found that in case of fuel leakage inside the conduit used to route the clear ice detector wiring through the wing fuel tank, it is possible to have fuel accumulation inside the conduit due to application of wiring protection sealant in the conduit end. The absence of fuel leakage detectability into the clear ice detector wiring conduit, associated with an ignition source, could result in fire or explosion inside the tank.

Corrective action includes removing the sealant used to protect the wiring conduits of the left-hand (LH) and right-hand (RH) clear ice detectors at the holes through the wing spars, and installing protective Teflon spiral around the wiring.

## Actions and Compliance

(f) At the applicable compliance time specified in paragraph (f)(1) or (f)(2) of this AD, unless already done, remove the sealant used to protect the LH and RH clear ice detector wiring conduits at the holes through the wing spars and install protective Teflon spiral, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145-30-0048 or 145LEG-30-0015, both dated March 31, 2006, as applicable.

(1) For Model EMB-135BJ airplanes: Within 4,000 flight hours or 48 months after the effective date of this AD, whichever occurs first.

(2) For Model EMB-145XR airplanes: Within 5,000 flight hours or 48 months after the effective date of this AD, whichever occurs first.

## FAA AD Differences

**Note:** This AD differs from the MCAI and/or service information as follows. The MCAI specifies a compliance time of "5,000 flight hours" for all affected airplanes. This AD requires a compliance time of "5,000 flight hours" for Model EMB-145XR airplanes, and "4,000 flight hours" for Model EMB-135BJ airplanes. This difference has been coordinated with the Agência Nacional de Aviação Civil.

## Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1405; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

## Related Information

(h) Refer to MCAI Brazilian Airworthiness Directive 2007-02-03, effective March 15, 2007; EMBRAER Service Bulletin 145-30-0048, dated March 31, 2006; and EMBRAER Service Bulletin 145LEG-30-0015, dated March 31, 2006 for related information.

## Material Incorporated by Reference

(i) You must use EMBRAER Service Bulletin 145-30-0048, dated March 31, 2006 or EMBRAER Service Bulletin 145LEG-30-0015, dated March 31, 2006, as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on May 30, 2008.

**Ali Bahrami,**

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-12734 Filed 6-10-08; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2008-0306; Directorate Identifier 2008-CE-014-AD; Amendment 39-15544; AD 2008-12-01]

RIN 2120-AA64

**Airworthiness Directives; Cessna Aircraft Company Model 525 Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Cessna Aircraft Company (Cessna) Model 525 airplanes. This AD requires you to inspect for missing firewall sealant between the aft firewall assembly and seal assembly; and, if you find that firewall sealant is missing, seal with firewall sealant between the aft firewall assembly and seal assembly. This AD results from a report that firewall sealant may not have been applied between the aft firewall assembly and seal assembly during manufacture of certain Model 525 airplanes. We are issuing this AD to detect and correct missing firewall sealant between the aft firewall assembly and seal assembly, which could result in failure of the fire extinguishing system to prevent the

spread of fire through the firewall gap. This failure could lead to an uncontrolled fire.

**DATES:** This AD becomes effective on July 16, 2008.

On July 16, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

**ADDRESSES:** For service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517-5800; fax: (316) 942-9006.

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at <http://www.regulations.gov>. The docket number is FAA-2008-0306; Directorate Identifier 2008-CE-014-AD.

**FOR FURTHER INFORMATION CONTACT:** James Galstad, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946-4135; fax: (316) 946-4107.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

On March 7, 2008, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna Model 525 airplanes.

This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 13, 2008 (73 FR 13486). The NPRM proposed to require you to inspect for missing firewall sealant between the aft firewall assembly and seal assembly; and, if you find that firewall sealant is missing, seal with firewall sealant between the aft firewall assembly and seal assembly.

**Comments**

We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

**Conclusion**

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

**Costs of Compliance**

We estimate that this AD affects 45 airplanes in the U.S. registry.

We estimate the following costs to do the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × \$80 per hour = \$80 .....	Not Applicable .....	\$80	\$3,600

We estimate the following costs to do any necessary repairs that would be

required based on the results of the inspection. We have no way of

determining the number of airplanes that may need this repair:

Labor cost	Parts cost	Total cost per airplane
4 work-hours × \$80 per hour = \$320 .....	\$30	\$350

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with

promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

**Regulatory Findings**

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will

not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "Docket No. FAA-2008-0306; Directorate Identifier 2008-CE-014-AD" in your request.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator,

the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding the following new AD:

**2008-12-01 Cessna Aircraft Company:**  
Amendment 39-15544; Docket No. FAA-2008-0306; Directorate Identifier 2008-CE-014-AD.

#### Effective Date

(a) This AD becomes effective on July 16, 2008.

#### Applicability

(c) This AD applies to Model 525 airplanes, serial numbers 525-0600 through 525-0662, that are certificated in any category.

#### Affected ADs

(b) None.

#### Unsafe Condition

(d) This AD results from a report that firewall sealant may not have been applied between the aft firewall assembly and seal assembly during manufacture of certain Model 525 airplanes. We are issuing this AD to detect and correct missing firewall sealant between the aft firewall assembly and seal assembly, which could result in failure of the fire extinguishing system to prevent the spread of fire through the firewall gap. This failure could lead to an uncontrolled fire.

#### Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Inspect between the 6352225 aft firewall assembly and 6352226 seal assembly for missing firewall sealant.	Within the next 60 hours time-in-service (TIS) after July 16, 2008 (the effective date of this AD) or within 60 days after July 16, 2008 (the effective date of this AD), whichever occurs first.	Follow Cessna Aircraft Company Citation Service Letter SL525-71-05, Revision 1, dated February 6, 2008.
(2) If, as a result of the inspection required by paragraph (e)(1) of this AD, you find there is missing firewall sealant between the 6352225 aft firewall assembly and 6352226 seal assembly, seal with U000117S firewall sealant in the gap between the 6352225 aft firewall assembly and 6352226 seal assembly.	Before further flight after the inspection required by paragraph (e)(1) of this AD.	Follow Cessna Aircraft Company Citation Service Letter SL525-71-05, Revision 1, dated February 6, 2008.

#### Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: James Galstad, Aerospace Engineer, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946-4135; fax: (316) 946-4107. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

#### Material Incorporated by Reference

(g) You must use Cessna Aircraft Company Citation Service Letter SL525-71-05, Revision 1, dated February 6, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517-5800; fax: (316) 942-9006.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Kansas City, Missouri, on May 27, 2008.

**David R. Showers,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8-12305 Filed 6-10-08; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2008-0369; Directorate Identifier 2008-CE-015-AD; Amendment 39-15545; AD 2008-12-02]

**RIN 2120-AA64**

**Airworthiness Directives; British Aerospace Regional Aircraft Model HP.137 Jetstream Mk.1, Jetstream Series 200 and 3101, and Jetstream Model 3201 Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final Rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation

product. The MCAI describes the unsafe condition as:

A failure mode has been identified following the examination of parts from another aircraft type (Jetstream 4100 series) that can lead to the loss of a nose-wheel. The Jetstream (HP.137) Mk1, 200, 3100 and 3200 series use a similar method for retaining the wheel assemblies on the landing gear axle and can therefore experience the same type of failure, i.e. a combination of excessive wear and/or adverse tolerances on the axle inner cone, outer cone or wheel hub splined sleeve cones resulting in the loss of the critical gap between the inner flange face of the wheel outer cone and the axle end face. If this gap is lost, it results in the wheel having free play along the length of the axle. This condition, if not corrected, can cause the wheel nut lock plate to break, leading to the wheel retention nut unscrewing and subsequent separation of the nose wheel from the landing gear axle.

We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective July 16, 2008.

On July 16, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4138; fax: (816) 329-4090.

#### **SUPPLEMENTARY INFORMATION:**

#### **Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 31, 2008 (73 FR 16790). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A failure mode has been identified following the examination of parts from another aircraft type (Jetstream 4100 series) that can lead to the loss of a nose-wheel. The Jetstream (HP.137) Mk1, 200, 3100 and 3200 series use a similar method for retaining the wheel assemblies on the landing gear axle and can therefore experience the same type of failure, i.e. a combination of excessive wear and/or adverse tolerances on the axle inner cone, outer cone or wheel hub splined

sleeve cones resulting in the loss of the critical gap between the inner flange face of the wheel outer cone and the axle end face. If this gap is lost, it results in the wheel having free play along the length of the axle. This condition, if not corrected, can cause the wheel nut lock plate to break, leading to the wheel retention nut unscrewing and subsequent separation of the nose wheel from the landing gear axle.

For the reasons described above, this AD requires repetitive inspections of the nose landing gear to ensure that the wheels are correctly retained and, depending on findings, replacement of worn parts.

You may obtain further information by examining the MCAI in the AD docket.

#### **Comments**

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

#### **Conclusion**

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

#### **Differences Between This AD and the MCAI or Service Information**

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

#### **Costs of Compliance**

Based on the service information, we estimate that this AD will affect 190 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with basic requirements of this AD. The average labor rate is \$80 per work-hour.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$15,200 or \$80 per product.

In addition, we estimate that any necessary follow-on actions would take about 1 work-hour and require parts costing \$250, for a cost of \$330 per product. We have no way of determining the number of products that may need these actions.

#### **Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

#### **Regulatory Findings**

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

#### **Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by adding the following new AD:

**2008–12–02 British Aerospace Regional Aircraft:** Amendment 39–15545; Docket No. FAA–2008–0369; Directorate Identifier 2008–CE–015–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective July 16, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Model HP.137 Jetstream Mk.1, Jetstream Series 200 and 3101, and Jetstream Model 3201 airplanes, all serial numbers, certificated in any category.

**Subject**

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

**Reason**

(e) The mandatory continuing airworthiness information (MCAI) states: A failure mode has been identified following the examination of parts from another aircraft type (Jetstream 4100 series) that can lead to the loss of a nose-wheel. The Jetstream (HP.137) Mk1, 200, 3100 and 3200 series use a similar method for retaining the wheel assemblies on the landing gear axle and can therefore experience the same type of failure, i.e. a combination of excessive wear and/or adverse tolerances on the axle inner cone, outer cone or wheel hub splined sleeve cones resulting in the loss of the critical gap between the inner flange face of the wheel outer cone and the axle end face. If this gap is lost, it results in the wheel having free play along the length of the axle.

This condition, if not corrected, can cause the wheel nut lock plate to break, leading to the wheel retention nut unscrewing and subsequent separation of the nose wheel from the landing gear axle.

For the reasons described above, this AD requires repetitive inspections of the nose landing gear to ensure that the wheels are correctly retained and, depending on findings, replacement of worn parts.

**Actions and Compliance**

(f) Unless already done, do the following actions:

(1) Within the next 3 months after July 16, 2008 (the effective date of this AD), initially inspect the left and right nose wheel attachments to the axle following British Aerospace Jetstream Series 3100 and 3200 Service Bulletin 32–JA070241, dated July 13, 2007.

(2) Repetitively thereafter inspect the left and right nose wheel attachments to the axle at the intervals specified in Table 1 of this AD following British Aerospace Jetstream Series 3100 and 3200 Service Bulletin 32–JA070241, dated July 13, 2007. If during any repetitive inspection the gap measurement changes from the previous inspection measurement, adjust the repetitive inspection interval as necessary based on Table 1 of this AD.

TABLE 1.—REPETITIVE INSPECTION INTERVALS

If the measured gap size is:	Then repetitively inspect at the following intervals:
0.002 through 0.005 inches (0.05 through 0.13 mm) .....	Within 500 hours time-in-service (TIS).
More than 0.005 through 0.010 inches (0.13 through 0.25 mm) .....	Within 1,000 hours TIS.
More than 0.010 through 0.020 inches (0.25 through 0.51 mm) .....	Within 2,000 hours TIS.
More than 0.020 inches (0.51 mm) .....	Within 3,000 hours TIS.

(3) Before further flight, if during any of the inspections required in paragraphs (f)(1) or (f)(2) of this AD you find the gap between the inner flange of the outer cone and the axle end face is less than 0.002 inches (0.05 mm), replace all worn parts.

**Note 1:** Replacement of parts does not constitute terminating action for the inspection requirements of this AD.

**FAA AD Differences**

**Note 2:** This AD differs from the MCAI and/or service information as follows: No differences.

**Other FAA AD Provisions**

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District

Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

**Related Information**

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No: 2008–0037, dated February 22, 2008; and British Aerospace Jetstream Series 3100 and 3200 Service Bulletin 32–JA070241, dated July 13, 2007, for related information.

**Material Incorporated by Reference**

(i) You must use British Aerospace Jetstream Series 3100 and 3200 Service Bulletin 32–JA070241, dated July 13, 2007, to

do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Project Management Group, Customer Information Department, BAE SYSTEMS (OPERATIONS), Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: +44 1292 675207; fax: +44 1292 675704; e-mail: [RAPublications@baesystems.com](mailto:RAPublications@baesystems.com).

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Kansas City, Missouri, on May 28, 2008.

**David R. Showers,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8–12412 Filed 6–10–08; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2007-29333; Directorate Identifier 2007-NM-141-AD; Amendment 39-15547; AD 2008-12-04]

RIN 2120-AA64

**Airworthiness Directives; Boeing Model 737-600, -700, -700C, -800, and -900 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Boeing Model 737-600, -700, -700C, -800, and -900 series airplanes. This AD requires various repetitive inspections to detect cracks along the chemically milled steps of the fuselage skin or missing or loose fasteners in the area of the preventative modification or repairs, replacement of the time-limited repair with the permanent repair if applicable, and applicable corrective actions if necessary, which would end certain repetitive inspections. This AD results from a fatigue test that revealed numerous cracks in the upper skin panel at the chemically milled step above the lap joint. We are issuing this AD to detect and correct such fatigue-related cracks, which could result in the crack tips continuing to turn and grow to the point where the skin bay flaps open, causing decompression of the airplane.

**DATES:** This AD is effective July 16, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 16, 2008.

**ADDRESSES:** For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207.

**Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800-647-5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140,

1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:**

Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6447; fax (425) 917-6590.

**SUPPLEMENTARY INFORMATION:****Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 737-600, -700, -700C, -800, and -900 series airplanes. That NPRM was published in the **Federal Register** on September 28, 2007 (72 FR 55118) (An extension of the comment period for that NPRM was published in the **Federal Register** on November 14, 2007 (72 FR 64009)). That NPRM proposed to require various repetitive inspections to detect cracks along the chemically milled steps of the fuselage skin or missing or loose fasteners in the area of the preventative modification or repairs, replacement of the time-limited repair with the permanent repair if applicable, and applicable corrective actions if necessary, which would end certain repetitive inspections.

**Comments**

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

**Request To Provide Exception for Previously Installed Repairs**

Southwest Airlines notes that the proposed AD does not state how to do the inspection in an area that has a previously installed repair. Southwest Airlines states that AD 2004-18-06, amendment 39-13784 (69 FR 54206, September 8, 2004), which addresses chemically milled steps of the fuselage skin for Boeing Model 737-200, -200C, -300, -400, and -500 series airplanes, contains an exception that addresses the issue of a previously installed repair. Southwest Airlines asks that we include a similar exception in this AD.

We agree that the NPRM needs to be clarified regarding procedures for previously installed repairs, and have added new paragraphs (j) and (k) to this AD to explain the exceptions. We note that the exception to the procedures required by paragraph (g) of this AD is similar to the exception in AD 2004-18-06, except that for this AD, post-preventive modifications and repair supplemental inspections are required for repairs installed in accordance with

Boeing Special Attention Service Bulletin 737-53-1232, dated April 2, 2007 (cited as the appropriate source of service information for accomplishing the actions in the NPRM). We have also re-identified subsequent paragraphs accordingly.

**Request To Allow Optional Eddy Current Inspection Method**

Continental Airlines (Continental) requests that we allow the use of the eddy current inspection procedures given in the Boeing 737 Non-Destructive Test (NDT) Manual, Part 6, Subjects 53-30-25 (c-scan eddy current inspection), as an alternative to Subjects 53-30-19 and 53-30-23 listed in Boeing Special Attention Service Bulletin 737-53-1232, dated April 2, 2007. Continental notes that the eddy current procedure in Subject 53-30-25 was approved as an alternative method of compliance (AMOC) for AD 2005-13-27, amendment 39-14164 (70 FR 36821, June 27, 2005), which mandates a similar fuselage skin inspection for Boeing Model 737-300, -400, and -500 series airplanes.

We agree that the NDT method Continental specifies provides an acceptable means to find cracking in the internal surface of the fuselage skin at the edge of a sub-surface doubler. Therefore, we have revised this AD to include a new paragraph (l)(4) to the AMOC paragraph (paragraph (j) of the NPRM). Paragraph (l)(4) states that Boeing Model 737 NDT Manual, Part 6, Subject 53-30-25, is an AMOC for Subjects 53-30-19 and 53-30-23.

**Request To Clarify Paragraph (g) of the NPRM**

Boeing requests that we clarify the wording in paragraph (g) of the NPRM to indicate which corrective actions are required and when. Boeing specifically states that the word "applicable" is missing from paragraph (g) of the NPRM, and requests that the paragraph state "accomplishing all of the applicable actions specified in the Accomplishment Instructions of the service bulletin." Boeing explains that, without the word "applicable," the AD would require accomplishment of all actions within the Accomplishment Instructions, even those that do not apply under certain conditions.

We agree to clarify paragraph (g) for the stated reasons. We have revised paragraph (g) of this AD to include the word "applicable" in the requested place.



### Request To Improve Detail in Service Bulletin

The Air Transport Association (ATA) on behalf of its member Delta Airlines, requests that we encourage Boeing to improve the level of detail in Boeing Special Attention Service Bulletin 737-53-1232, dated April 2, 2007, specifically Part V of the Accomplishment Instructions, "Preventative Modification." The commenters explain that the current data and figures for the modification are vague and could lead to considerable variation among operators in interpretation and installation. The commenters also state that, as a minimum, Boeing should issue a set of engineering drawings for typical modification parts for each affected group of airplanes, and incorporate them into a revision of the service bulletin.

We disagree that the level of detail in Part V of the service bulletin is insufficient. As shown in Part V and its associated figures, modification doublers and fillers are to be centered in the skin pocket with their width determined by the existing fastener spacing common to the lap splice. Adding engineering drawings to the information already in the service bulletin could result in confusion due to variations in fastener spacing common to the lap joints. We have not changed the AD in this regard.

### Request To Extend Repetitive Interval To Match C-Check Interval

The ATA, on behalf of its member Alaska Airlines, requests that we extend the repetitive inspection intervals proposed in the NPRM and express them in terms of C-check intervals. The commenters explain that the current repetitive inspection intervals are not sufficient to bridge successive C-checks, and will thus make it necessary to have a frequent and possibly repetitive inspection in the line environment. The commenters further state that the preventive modification proposed in the NPRM would lengthen the repetitive inspection interval from 1,500 flight cycles to either 4,000 or 6,000 flight cycles. In the commenters' opinion, this action does not justify the cost or manpower for doing the preventive modification.

We do not agree with the commenter's request to extend the repetitive intervals. We have determined that the proposed compliance time represents the maximum interval of time allowable for the affected airplanes to continue to safely operate before the modification is done. We determined the inspection

intervals in this AD using damage tolerance methods to ensure that damage can be detected before it becomes critical on the structure. Also, compliance intervals cannot be based on nonspecific intervals such as a C-check. Since maintenance schedules vary among operators, there would be no assurance that corrective action would be done within the timeframe for safe operation of the airplane. Further, in developing appropriate compliance times for this AD, we considered the urgency associated with the subject unsafe condition, and the practical aspect of accomplishing the required actions within a period of time that corresponds to the normal scheduled maintenance for most affected operators. The repetitive intervals following preventative modification were part of these considerations. We have not changed the AD in this regard.

### Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

### Costs of Compliance

There are about 871 airplanes of the affected design in the worldwide fleet. This AD affects about 378 airplanes of U.S. registry. The inspections take between 11 and 25 work hours per airplane depending on the airplane configuration, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is between \$332,640 and \$756,000, or between \$880 and \$2,000 per airplane, per inspection cycle.

### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority

because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new AD:

**2008-12-04 Boeing:** Amendment 39-15547.  
Docket No. FAA-2007-29333;  
Directorate Identifier 2007-NM-141-AD.

#### Effective Date

- (a) This airworthiness directive (AD) is effective July 16, 2008.

#### Affected ADs

- (b) None.

#### Applicability

- (c) This AD applies to Boeing Model 737-600, -700, -700C, -800, and -900 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 737-53-1232, dated April 2, 2007.

**Unsafe Condition**

(d) This AD results from a fatigue test that revealed numerous cracks in the upper skin panel at the chemically milled step above the lap joint. We are issuing this AD to detect and correct such fatigue-related cracks, which could result in the crack tips continuing to turn and grow to the point where the skin bay flaps open, causing decompression of the airplane.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Service Bulletin**

(f) The term "service bulletin," as used in this AD, means Boeing Special Attention Service Bulletin 737-53-1232, dated April 2, 2007.

**Inspections and Replacement, As Applicable**

(g) At the applicable compliance times listed in Tables 1, 2, and 3 of paragraph 1.E., "Compliance," of the service bulletin, or within the time specified in paragraph (g)(1) or (g)(2) of this AD, as applicable, whichever occurs later, and thereafter at the applicable repeat intervals listed in Tables 1, 2, and 3: Do the applicable inspections and replacement by accomplishing all the applicable actions specified in the Accomplishment Instructions of the service bulletin.

(1) For airplanes specified in Tables 1 and 2 of paragraph 1.E., "Compliance," of the service bulletin: Do the applicable initial inspection required by paragraph (g) of this AD within 36 months after the effective date of this AD.

(2) For airplanes specified in Table 3 of paragraph 1.E., "Compliance," of the service bulletin: Do the applicable initial inspection and replacement required by paragraph (g) of this AD within 24 months after the effective date of this AD.

**Corrective Actions**

(h) If any crack or loose or missing fastener is found during any applicable inspection required by paragraph (g) of this AD, before further flight, do the applicable corrective action in accordance with the service bulletin; except, where the service bulletin specifies to contact Boeing for appropriate action, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

**Terminating Action for Certain Repetitive Inspections**

(i) For airplanes on which the preventative modification specified in the service bulletin has not been installed: Accomplishing the preventative modification, time-limited repair, or permanent repair in accordance with the service bulletin ends the applicable repetitive external detailed inspections required by paragraph (g) of this AD.

**Exceptions to the Service Bulletin Procedures for Previously Installed Repairs**

(j) For any airplane subject to the requirements of paragraph (g) of this AD:

Inspections done at the compliance times specified in Table 1 of paragraph 1.E., "Compliance," of the service bulletin are not required in areas that are spanned by an FAA-approved repair that has a minimum of 3 rows of fasteners above and below the chemically milled step. Post-repair supplemental inspections are to be done at the times specified in Table 2 of paragraph 1.E., "Compliance," of the service bulletin.

(k) For any airplane that has an external doubler covering the chemically milled step, but the doubler does not span the step by a minimum of 3 rows of fasteners above and below the chemically milled step: Instead of requesting approval for an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l) of this AD, one method of compliance with the inspection requirement of paragraph (g) of this AD is to inspect all chemically milled steps covered by the repair using non-destructive test (NDT) methods in accordance with the Boeing 737 NDT Manual, Part 6, Subject 53-30-20. These repairs are to be considered time-limited and are subject to the post-repair supplemental inspections and replacement at the times specified in Table 3 of paragraph 1.E., "Compliance," of the service bulletin.

**Alternative Methods of Compliance (AMOCs)**

(l)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Use of Boeing Model 737 NDT Manual, Part 6, Subject 53-30-25, is an AMOC for Boeing Model 737 NDT Manual, Part 6, Subjects 53-30-19 and 53-30-23, as specified in the service bulletin.

**Material Incorporated by Reference**

(m) You must use Boeing Special Attention Service Bulletin 737-53-1232, dated April 2, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207.

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on May 29, 2008.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8-12761 Filed 6-10-08; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

**[Docket No. FAA-2008-0363; Directorate Identifier 2008-NM-020-AD; Amendment 39-15553; AD 2008-12-10]**

**RIN 2120-AA64**

**Airworthiness Directives; Bombardier Model CL-600-2B19 (Regional Jet Series 100 & 440) Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

\* \* \* \* \*

This assessment showed that the electrical harness of the Fuel Quantity Gauging System (FQGS) is installed in the same routing as the 28 Volts AC, 28 Volts DC, and 115 Volts AC electrical harnesses. A chafing condition between these electrical harnesses and the FQGS harness could increase the surface temperatures of fuel quantity probes and high level sensors inside the fuel tank, resulting in potential ignition source[s] and consequent fuel tank explosion.

\* \* \* \* \*

We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective July 16, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 16, 2008.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Richard Fiesel, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7304; fax (516) 794-5531.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 27, 2008 (73 FR 16221). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Bombardier Aerospace has completed a system safety review of the CL-600-2B19 aircraft fuel system against new fuel tank safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002-043. The identified non-compliances were assessed using Transport Canada Policy Letter No. 525-001, to determine if mandatory corrective action is required.

This assessment showed that the electrical harness of the Fuel Quantity Gauging System (FQGS) is installed in the same routing as the 28 Volts AC, 28 Volts DC, and 115 Volts AC electrical harnesses. A chafing condition between these electrical harnesses and the FQGS harness could increase the surface temperatures of fuel quantity probes and high level sensors inside the fuel tank, resulting in potential ignition source[s] and consequent fuel tank explosion.

To correct the unsafe condition, this directive mandates the modification of FQGS electrical harness routing.

You may obtain further information by examining the MCAI in the AD docket.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and

new maintenance requirements, this rule included Special Federal Aviation Regulation Number 88 ("SFAR 88," Amendment 21-78, and subsequent Amendments 21-82 and 21-83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

**Comments**

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

**Conclusion**

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

**Differences Between This AD and the MCAI or Service Information**

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use

different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

**Costs of Compliance**

We estimate that this AD will affect 709 products of U.S. registry. We also estimate that it will take about 83 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$80 per work-hour. Required parts will cost about \$15,552 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$15,734,128, or \$22,192 per product.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

- Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new AD:

**2008-12-10 Bombardier, Inc. (Formerly Canadair):** Amendment 39-15553. Docket No. FAA-2008-0363; Directorate Identifier 2008-NM-020-AD.

#### Effective Date

- (a) This airworthiness directive (AD) becomes effective July 16, 2008.

#### Affected ADs

- (b) None.

#### Applicability

- (c) This AD applies to Bombardier Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes; certificated in any category; serial numbers 7003 through 7067 inclusive, and 7069 through 7982 inclusive.

#### Subject

- (d) Air Transport Association (ATA) of America Code 28: Fuel.

#### Reason

- (e) The mandatory continuing airworthiness information (MCAI) states: Bombardier Aerospace has completed a system safety review of the CL-600-2B19 aircraft fuel system against new fuel tank

safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002-043. The identified non-compliances were assessed using Transport Canada Policy Letter No. 525-001, to determine if mandatory corrective action is required.

This assessment showed that the electrical harness of the Fuel Quantity Gauging System (FQGS) is installed in the same routing as the 28 Volts AC, 28 Volts DC, and 115 Volts AC electrical harnesses. A chafing condition between these electrical harnesses and the FQGS harness could increase the surface temperatures of fuel quantity probes and high level sensors inside the fuel tank, resulting in potential ignition source[s] and consequent fuel tank explosion.

To correct the unsafe condition, this directive mandates the modification of FQGS electrical harness routing.

#### Actions and Compliance

- (f) Within 10,000 flight hours after the effective date of this AD, unless already done, do the following actions.

(1) Modify the FQGS harness routing according to the Accomplishment Instructions of Bombardier Service Bulletin 601R-28-059, Revision E, dated October 29, 2007.

(2) Actions done before the effective date of this AD in accordance with the Bombardier service information specified in Table 1 of this AD are acceptable for compliance with the corresponding requirements of this AD.

TABLE 1.—SERVICE INFORMATION

Service Bulletin	Revision	Date
601R-28-059 .....	Original .....	October 19, 2004.
601R-28-059 .....	A .....	July 28, 2005.
601R-28-059 .....	B .....	November 17, 2005.
601R-28-059 .....	C .....	March 8, 2007.
601R-28-059 .....	D .....	May 10, 2007.

#### FAA AD Differences

**Note:** This AD differs from the MCAI and/or service information as follows: No differences.

#### Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Richard Fiesel, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7304; fax (516) 794-5531. Before using any approved AMOC on any airplane to

which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

#### Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF-2007-36, dated December 21, 2007, and Bombardier Service Bulletin 601R-28-059, Revision E, dated October 29, 2007, for related information.

#### Material Incorporated by Reference

(i) You must use Bombardier Service Bulletin 601R-28-059, Revision E, dated October 29, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station

Centre-ville, Montreal, Quebec H3C 3G9, Canada.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on May 29, 2008.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate,  
Aircraft Certification Service.*

[FR Doc. E8-12825 Filed 6-10-08; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-0393; Directorate Identifier 2007-NM-183-AD; Amendment 39-15548; AD 2008-12-05]

**RIN 2120-AA64**

#### Airworthiness Directives; Boeing Model 777 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Boeing Model 777 airplanes. This AD requires an inspection to determine the manufacturer and manufacture date of the oxygen masks in the center and outboard passenger service units, crew rests, and lavatory and flight attendant oxygen boxes, as applicable. This AD also requires related investigative/corrective actions if necessary. This AD results from a report that several passenger masks with broken in-line flow indicators were found following a mask deployment. We are issuing this AD to prevent the in-line flow indicators of the passenger oxygen masks from fracturing and separating, which could inhibit oxygen flow to the masks and consequently result in exposure of the passengers and cabin attendants to hypoxia following a depressurization event.

**DATES:** This AD is effective July 16, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 16, 2008.

**ADDRESSES:** For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800-647-5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

#### FOR FURTHER INFORMATION CONTACT:

Robert Hettman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM-150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6457; fax (425) 917-6590.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 777 airplanes. That NPRM was published in the **Federal Register** on January 10, 2008 (73 FR 1844). That NPRM proposed to require an inspection to determine the manufacturer and manufacture date of the oxygen masks in the center and outboard passenger service units (PSUs), crew rests, and lavatory and flight attendant oxygen boxes, as applicable. The NPRM also proposed to require related investigative/corrective actions if necessary.

##### Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the two commenters.

#### Request To Revise the Relevant Service Information Section

Boeing requests that we revise the Relevant Service Information section of the NPRM to include a general visual inspection of the flow indicator to determine whether the letter "W" appears on the right side of the identification (ID) label. Boeing states that this inspection should be included in the NPRM, since the presence of the letter "W" on the ID label indicates that the corrective actions have already been accomplished.

We agree to clarify the related investigative and corrective actions

required by this AD. If the ID label on the oxygen mask shows that the mask was manufactured by B/E Aerospace between January 1, 2002 and March 1, 2006, then the related investigative action must be done. The related investigative action includes doing a general visual inspection of the flow indicator to determine the color of the flow direction mark and the word "flow" on the flow indicator, and to determine whether the letter "W" appears on the right side of the ID label. If the flow direction mark and the word "flow" on the flow indicator of the oxygen mask are not green and the letter "W" is not shown on the right side of the ID label, then the corrective action must be done. The corrective action includes replacing the oxygen mask with one that was not manufactured by B/E Aerospace between January 1, 2002, and March 1, 2006, or with a modified oxygen mask having an improved flow indicator. We have revised paragraph (f) of this AD accordingly. (Boeing Special Attention Service Bulletin 777-35-0019, dated March 9, 2006, refers to B/E Aerospace Service Bulletin 174080-35-01, dated February 6, 2006; and Revision 1, dated May 1, 2006; as additional sources of service information for modifying the oxygen mask assembly by replacing the flow indicator with an improved flow indicator.) The intent of this AD is to accomplish all of the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777-35-0019. Since the Relevant Service Information section is not retained in an AD, we have not changed this AD in this regard.

#### Request To Revise the Discussion Section

Boeing requests that we add a statement to the Discussion section of the NPRM clarifying that only masks manufactured by B/E Aerospace between January 1, 2002 and March 1, 2006 would require corrective action. Boeing states that no further action is required for oxygen masks manufactured outside those dates or manufactured by other suppliers. Boeing also states that not including all of the contents of Boeing Special Attention Service Bulletin 777-35-0019 in this AD, and not clarifying the intent of the AD, will generate many requests for clarification from operators.

We have clarified the requirements of this AD in our response to the previous comment. No additional change to this AD is necessary in this regard, since the Discussion section of the NPRM is not retained in this final rule.

### Request To Delete Certain Requirements or Add a Terminating Action

British Airways states that it does not agree with the proposed requirement to replace a discrepant oxygen mask with one having an improved flow indicator because only the oxygen masks identified in Boeing Special Attention Service Bulletin 777-35-0019 are potentially defective. The commenter also states that it has inspected some of its airplanes and replaced all discrepant masks with new masks that do not fall within the rejection criteria. The commenter believes that it should not have to re-inspect the oxygen mask assemblies for the presence of an improved flow indicator after this AD is issued. The commenter, therefore, requests that we revise this AD in either one of the following ways:

- Delete the phrase from paragraph (f) of this AD that states “\* \* \* except where the service bulletin specifies installing a new oxygen mask, replace the oxygen mask with a new or modified oxygen mask having an improved flow indicator.”

- Add a statement to this AD specifying that inspections done in accordance with Boeing Special Attention Service Bulletin 777-35-0019 before issuance of this AD comply with the intent of this AD and do not need to be repeated.

We agree that inspections done in accordance with Boeing Special Attention Service Bulletin 777-35-0019 before the effective date of this AD do not need to be accomplished again. However, no change is necessary in this regard, since a similar statement is contained already in paragraph (e) of this AD. Further, as stated previously, we have clarified the phrase regarding replacement of the oxygen mask in paragraph (f) of this AD. The intent of that phrase is to provide the option of replacing a discrepant oxygen mask with one that was not manufactured by B/E Aerospace between January 1, 2002, and March 1, 2006, or with a modified oxygen mask having an improved flow indicator in accordance with B/E Aerospace Service Bulletin 174080-35-01.

### Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

### Costs of Compliance

There are about 433 airplanes of the affected design in the worldwide fleet. This AD affects about 123 airplanes of U.S. registry. The required actions take about 70 work hours per airplane, with an average of 480 oxygen masks per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is \$688,800, or \$5,600 per airplane.

### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. “Subtitle VII: Aviation Programs,” describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in “Subtitle VII, Part A, Subpart III, Section 44701: General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

**2008-12-05 Boeing:** Amendment 39-15548. Docket No. FAA-2007-0393; Directorate Identifier 2007-NM-183-AD.

#### Effective Date

(a) This airworthiness directive (AD) is effective July 16, 2008.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Boeing Model 777-200, -200LR, -300, and -300ER series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 777-35-0019, dated March 9, 2006.

#### Unsafe Condition

(d) This AD results from a report that several passenger masks with broken in-line flow indicators were found following a mask deployment. We are issuing this AD to prevent the in-line flow indicators of the passenger oxygen masks from fracturing and separating, which could inhibit oxygen flow to the masks and consequently result in exposure of the passengers and cabin attendants to hypoxia following a depressurization event.

#### Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

#### Inspection and Related Investigative/Corrective Actions if Necessary

(f) Within 60 months after the effective date of this AD, do a general visual inspection to determine the manufacturer and manufacture date of the oxygen masks in the center and outboard passenger service units, crew rests, and lavatory and flight attendant oxygen boxes, as applicable, and do the applicable related investigative and corrective actions, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777-35-0019, dated March 9, 2006; except where the service bulletin specifies installing a new oxygen mask, replace the oxygen mask with one that was not manufactured by B/E Aerospace between January 1, 2002, and March 1, 2006, or with a modified oxygen

mask having an improved flow indicator. The related investigative and corrective actions must be done before further flight.

**Note 1:** The Boeing service bulletin refers to B/E Aerospace Service Bulletin 174080-35-01, dated February 6, 2006; and Revision 1, dated May 1, 2006; as additional sources of service information for modifying the oxygen mask assembly by replacing the flow indicator with an improved flow indicator.

#### Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

#### Material Incorporated by Reference

(h) You must use Boeing Special Attention Service Bulletin 777-35-0019, dated March 9, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207.

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on May 29, 2008.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate,  
Aircraft Certification Service.*

[FR Doc. E8-12717 Filed 6-10-08; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2008-0300; Directorate Identifier 2008-NM-019-AD; Amendment 39-15552; AD 2008-12-09]

RIN 2120-AA64

#### Airworthiness Directives; Bombardier Model CL-600-2C10 (Regional Jet Series 700, 701, & 702) and CL-600-2D24 (Regional Jet Series 900) Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

\* \* \* \* \*

The assessment and lightning tests showed that certain fuel tube self-bonded couplings do not provide sufficient lightning current capability. The assessment also showed that single failure of the integral bonding wire of the self-bonded couplings could affect electrical bonding between the tubes.

Insufficient electrical bonding between fuel tubes or insufficient current capability of fuel tube couplings, if not corrected, could result in arcing and potential ignition source[s] inside the fuel tank during lightning strikes and consequent fuel tank explosion. \* \* \*

We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective July 16, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 16, 2008.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

James Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York

11590; telephone (516) 228-7321; fax (516) 794-5531.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 17, 2008 (73 FR 14189). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Bombardier Aerospace has completed a system safety review of the CL-600-2C10/CL-600-2D24 aircraft fuel system against new fuel tank safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002-043. The identified non-compliances were assessed using Transport Canada Policy Letter No. 525-001 to determine if mandatory corrective action is required.

The assessment and lightning tests showed that certain fuel tube self-bonded couplings do not provide sufficient lightning current capability. The assessment also showed that single failure of the integral bonding wire of the self-bonded couplings could affect electrical bonding between fuel tubes.

Insufficient electrical bonding between fuel tubes or insufficient current capability of fuel tube couplings, if not corrected, could result in arcing and potential ignition source[s] inside the fuel tank during lightning strikes and consequent fuel tank explosion. To correct the unsafe condition, this directive mandates the replacement of certain fuel tube couplings with redesigned couplings.

You may obtain further information by examining the MCAI in the AD docket.

#### Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

#### Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

#### Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.



We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

### Costs of Compliance

We estimate that this AD will affect about 160 products of U.S. registry. We also estimate that it will take about 32 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$80 per work-hour. Required parts will cost about \$0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$409,600, or \$2,560 per product.

### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

**2008-12-09 Bombardier, Inc. (Formerly Canadair):** Amendment 39-15552. Docket No. FAA-2008-0300; Directorate Identifier 2008-NM-019-AD.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective July 16, 2008.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Bombardier Model CL-600-2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10003 through 10169 inclusive; and Model CL-600-2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15025 inclusive; certificated in any category.

#### Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

### Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Bombardier Aerospace has completed a system safety review of the CL-600-2C10/CL-600-2D24 aircraft fuel system against new fuel tank safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002-043. The identified non-compliances were assessed using Transport Canada Policy Letter No. 525-001 to determine if mandatory corrective action is required.

The assessment and lightning tests showed that certain fuel tube self-bonded couplings do not provide sufficient lightning current capability. The assessment also showed that single failure of the integral bonding wire of the self-bonded couplings could affect electrical bonding between fuel tubes.

Insufficient electrical bonding between fuel tubes or insufficient current capability of fuel tube couplings, if not corrected, could result in arcing and potential ignition source[s] inside the fuel tank during lightning strikes and consequent fuel tank explosion. To correct the unsafe condition, this directive mandates the replacement of certain fuel tube couplings with redesigned couplings.

### Actions and Compliance

(f) Within 4,500 flight hours after the effective date of this AD, unless already done, do the following actions.

(1) For airplanes on which Bombardier Service Bulletin 670BA-28-014, dated January 4, 2005, has not been incorporated as of the effective date of this AD: Replace fuel tube couplings inside the wing and center fuel tanks with redesigned couplings, in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 670BA-28-014, Revision A, dated May 7, 2007.

(2) For airplanes on which Bombardier Service Bulletin 670BA-28-014, dated January 4, 2005, has been incorporated as of the effective date of this AD: Do a visual inspection of the aft scavenge ejector fuel couplings inside the left- and right-hand wing fuel tanks to determine if redesigned couplings are installed, and replace with redesigned couplings as applicable, in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 670BA-28-014, Revision A, dated May 7, 2007.

### FAA AD Differences

**Note:** This AD differs from the MCAI and/or service information as follows: No differences.

### Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: James Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA, New York ACO, 1600 Stewart Avenue, Suite 410,



Westbury, New York 11590; telephone (516) 228-7321; fax (516) 794-5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product*: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements*: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

#### Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF-2008-02, dated January 3, 2008, and Bombardier Service Bulletin 670BA-28-014, Revision A, dated May 7, 2007, for related information.

#### Material Incorporated by Reference

(i) You must use Bombardier Service Bulletin 670BA-28-014, Revision A, dated May 7, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on May 30, 2008.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate,  
Aircraft Certification Service.*

[FR Doc. E8-12735 Filed 6-10-08; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2008-0426 Directorate Identifier 2008-CE-016-AD; Amendment 39-15549; AD 2008-12-06]

**RIN 2120-AA64**

#### Airworthiness Directives; MORAVAN a.s. Model Z-143L Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final Rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Vortex inserts are used inside the heat exchanger of the carburettor heating system. Up to serial number (s/n) 0044 inclusive those inserts have been produced from aluminium alloy which has been found to be susceptible of cracks. As a consequence, if left uncorrected some loose parts could migrate in the induction system, reduce the air flow through the carburettor's venturi and lead to a loss of engine power.

From s/n 0045 onwards vortex inserts have been produced from stainless steel.

We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective July 16, 2008.

On July 16, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; fax: (816) 329-4090.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR

part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 11, 2008 (73 FR 19766). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Vortex inserts are used inside the heat exchanger of the carburettor heating system. Up to serial number (s/n) 0044 inclusive those inserts have been produced from aluminium alloy which has been found to be susceptible of cracks. As a consequence, if left uncorrected some loose parts could migrate in the induction system, reduce the air flow through the carburettor's venturi and lead to a loss of engine power.

From s/n 0045 onwards vortex inserts have been produced from stainless steel.

#### Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

#### Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

#### Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the AD.

#### Costs of Compliance

Based on the service information, we estimate that this AD will affect 7 products of U.S. registry. We also estimate that it will take about 6 work-hours per product to comply with basic requirements of this AD. The average labor rate is \$80 per work-hour. Required parts will cost about \$100 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$4,060 or \$580 per product.

#### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I,

section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new AD:

**2008-12-06 Moravan a.s.:** Amendment 39-15549; Docket No. FAA-2008-0426; Directorate Identifier 2008-CE-016-AD.

#### Effective Date

- (a) This airworthiness directive (AD) becomes effective July 16, 2008.

#### Affected ADs

- (b) None.

#### Applicability

- (c) This AD applies to Model Z-143L airplanes, all serial numbers (SNs), certificated in any category.

#### Subject

- (d) Air Transport Association of America (ATA) Code 75: Engine Air.

#### Reason

(e) The mandatory continuing airworthiness information (MCAI) states: Vortex inserts are used inside the heat exchanger of the carburetor heating system. Up to serial number (s/n) 0044 inclusive those inserts have been produced from aluminium alloy which has been found to be susceptible of cracks. As a consequence, if left uncorrected some loose parts could migrate in the induction system, reduce the air flow through the carburetor's venturi and lead to a loss of engine power.

From s/n 0045 onwards vortex inserts have been produced from stainless steel.

To address this unsafe condition, this Airworthiness Directive (AD) mandates initial inspections of the heat exchanger vortex inserts and replacement of the aluminium inserts by stainless steel ones if any damage is found; and recurrent inspections to be done as incorporated in the Revision of Airplane Maintenance Manual.

#### Actions and Compliance

- (f) Unless already done, do the following actions:

(1) For all serial numbers (SNs) through SN 0044:

(i) Before further flight after July 16, 2008 (the effective date of this AD), inspect the vortex inserts inside the carburetor heating system heat exchanger for cracks and/or loose or missing rivets following paragraph 8 of Moravan Aviation s.r.o. Mandatory Service Bulletin Z143L/31a, dated June 8, 2007.

(ii) Before further flight, if as a result of the inspection required by paragraph (f)(1)(i) of this AD, you find any cracks and/or loose or

missing rivets for the vortex inserts, replace all vortex inserts with new vortex inserts made from stainless steel following paragraph 8 of Moravan Aviation s.r.o. Mandatory Service Bulletin Z143L/31a, dated June 8, 2007.

(2) For SN 0045 and greater: Within 110 hours time-in-service (TIS) after July 16, 2008 (the effective date of this AD) or within 60 days after July 16, 2008 (the effective date of this AD), whichever occurs first, inspect the vortex inserts inside the carburetor heating system heat exchanger following new instructions introduced by new pages 05-28, 75-7, 75-7A, and 75-8 of ZLIN Z 143 L Airplane Maintenance Manual, Revision No. 9, dated: June 8, 2007, and replace with new vortex inserts made from stainless steel, if cracks and/or loose or missing rivets for the vortex inserts are found.

(3) For all SNs: Within 60 days after July 16, 2008 (the effective date of this AD), incorporate new pages 01-11, 01-12, 01-24, 01-35, 05-28, 75-7, 75-7A, 75-7B, and 75-8 of ZLIN Z 143 L Airplane Maintenance Manual, Revision No. 9, dated: June 8, 2007, into your maintenance program. These pages include compliance times and procedures for repetitive inspections and corrective actions.

#### FAA AD Differences

**Note:** This AD differs from the MCAI and/or service information as follows: The MCAI requires compliance for the inspection of SN 0045 and greater at the next shop visit or within 110 hours TIS after the effective date of the MCAI. To assure the AD is clear for U.S. operators and all airplanes have the inspection done in a timely manner, this AD requires compliance for the inspection of SN 0045 and greater within 110 hours TIS after July 16, 2008 (the effective date of this AD) or within 60 days after July 16, 2008 (the effective date of this AD), whichever occurs first.

#### Other FAA AD Provisions

- (g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; fax: (816) 329-4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act

(44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

#### Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2008-0038, dated February 27, 2008; Moravan Aviation s.r.o. Mandatory Service Bulletin Z143L/31a, dated June 8, 2007; and new pages 01-11, 01-12, 01-24, 01-35, 05-28, 75-7, 75-7A, 75-7B, and 75-8 of ZLIN Z 143 L Airplane Maintenance Manual, Revision No. 9, dated: June 8, 2007, for related information.

#### Material Incorporated by Reference

(i) You must use Moravan Aviation s.r.o. Mandatory Service Bulletin Z143L/31a, dated June 8, 2007; and new pages 01-11, 01-12, 01-24, 01-35, 05-28, 75-7, 75-7A, 75-7B, and 75-8 of ZLIN Z 143 L Airplane Maintenance Manual, Revision No. 9, dated: June 8, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Moravan Aviation s.r.o., ZLIN Service, 765 81 Otrokovice, Czech Republic.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Kansas City, Missouri, on May 29, 2008.

**David R. Showers,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8-12754 Filed 6-10-08; 8:45 am]

**BILLING CODE 4910-13-P**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 232

[Release Nos. 33-8922; 34-57888; 39-2454; IC-28292]

### Adoption of Updated EDGAR Filer Manual

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (the Commission) is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) Filer Manual to reflect updates to the EDGAR system. The revisions are being made primarily to

reflect the United States Department of Treasury's Financial Management Service's (FMS) designation of U.S. Bank of St. Louis, Missouri, as the new Financial Agent for General Lockbox Services for the Commission. U.S. Bank assumed this responsibility from Mellon Bank effective February 4, 2008. In addition, the revisions include a modification to the EDGARLite Form TA-1 (Application for registration as a transfer agent filed pursuant to the Securities Exchange Act of 1934) to correct the form version number and Form TA-2 (Annual Report of Transfer Agent activities filed pursuant to the Securities Exchange Act of 1934) to allow filers to input up to two decimal places for percentage values in their response to Question 5(d).

The filer manual is also being revised to incorporate changes to reflect several amended rules and forms previously proposed or adopted by the Commission and implemented in EDGAR. Those rules address (1) the electronic submission on EDGAR of applications for orders under any section of the Investment Company Act of 1940 and Regulation E filings of Small Business Investment Companies (SBIC's) and Business Development Companies (BDC's) if and when the Commission might adopt rule changes making these mandatory electronic submissions and (2) Smaller Reporting Company regulatory relief and simplification.

The revisions to the Filer Manual reflect changes within Volume II entitled EDGAR Filer Manual, Volume II: "EDGAR Filing," Version 7 (May 2008). The updated manual will be incorporated by reference into the Code of Federal Regulations.

**DATES:** *Effective Date:* June 11, 2008.

The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of June 11, 2008.

**FOR FURTHER INFORMATION CONTACT:** In the Office of Information Technology, Rick Heroux, at (202) 551-8800; in the Office of Financial Management, for questions concerning the change in financial agents, contact Connie Cornett, at (202) 551-7812; in the Division of Investment Management, for questions concerning applications for orders under any section of the Investment Company Act of 1940, contact Ruth Armfield Sanders, Senior Special Counsel, Office of Legal and Disclosure, at (202) 551-6989, Nadya Roytblat, Assistant Director, Office of Investment Company Regulation, at (202) 551-6821, or Keith Carpenter, Senior Special Counsel, Office of Insurance Products, at (202) 551-6766; for questions

concerning Regulation E filings of Small Business Investment Companies (SBIC's) and Business Development Companies (BDC's), contact Ruth Armfield Sanders, Senior Special Counsel, Office of Legal and Disclosure, at (202) 551-6989; in the Division of Corporation Finance, for questions concerning Smaller Reporting Companies, Gerald J. Laporte, Chief; Kevin M. O'Neill, Special Counsel; or Johanna Vega Losert, Attorney-Advisor, Office of Small Business Policy (202) 551-3430.

**SUPPLEMENTARY INFORMATION:** Today we are adopting an updated EDGAR Filer Manual, Volume II. The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.<sup>1</sup> It also describes the requirements for filing using EDGARLink<sup>2</sup> and the Online Forms/XML Web site.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.<sup>3</sup> Filers should consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.<sup>4</sup>

<sup>1</sup> We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33-6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on August 20, 2007. See Release No. 33-8834 (August 15, 2007) [72 FR 46559].

<sup>2</sup> This is the filer assistance software. We provide filers filing on the EDGAR system.

<sup>3</sup> See Rule 301 of Regulation S-T (17 CFR 232.301).

<sup>4</sup> See Release Nos. 33-6977 (February 23, 1993) [58 FR 14628], IC-19284 (February 23, 1993) [58 FR 14848], 35-25746 (February 23, 1993) [58 FR 14999], and 33-6980 (February 23, 1993) [58 FR 15009] in which we comprehensively discuss the rules we adopted to govern mandated electronic filing. See also Release No. 33-7122 (December 19, 1994) [59 FR 67752], in which we made the EDGAR rules final and applicable to all domestic registrants; Release No. 33-7427 (July 1, 1997) [62 FR 36450], in which we adopted minor amendments to the EDGAR rules; Release No. 33-7472 (October 24, 1997) [62 FR 58647], in which we announced that, as of January 1, 1998, we would not accept in paper filings that we require filers to submit electronically; Release No. 34-40934 (January 12, 1999) [64 FR 2843], in which we made mandatory the electronic filing of Form 13F; Release No. 33-7684 (May 17, 1999) [64 FR 27888], in which we adopted amendments to implement the first stage of EDGAR modernization; Release No. 33-7855 (April 24, 2000) [65 FR 24788], in which we implemented EDGAR Release 7.0; Release No. 33-7999 (August 7, 2001) [66 FR 42941], in which we implemented EDGAR Release 7.5; Release No. 33-8007 (September 24, 2001) [66 FR 49829], in which we implemented EDGAR Release 8.0; Release No. 33-8224 (April 30, 2003) [68 FR 24345], in which we implemented EDGAR Release 8.5;

The FMS has designated U.S. Bank of St. Louis, Missouri, as the new Financial Agent for General Lockbox Services for the SEC.<sup>5</sup> U.S. Bank has taken over this responsibility from Mellon Bank effective February 4, 2008. EDGAR Release 9.9 was implemented on February 4, 2008 to make the system changes necessary to support this transition. All fee payments (wires and checks) must be submitted to U.S. Bank on and after this date. As of February 1, 2008, payments should no longer be submitted to Mellon Bank. It is not necessary for filers to have an account at U.S. Bank to submit fee payments.

For wire payments, the hours of operation at U.S. Bank are 8:30 a.m. until 6 p.m. eastern time for wires. U.S. Bank's ABA number is 081000210. To ensure proper credit and prompt filing acceptance, it is critical to include the SEC's account number at U.S. Bank (152307768324) and the payor's SEC-assigned CIK (Central Index Key) number (also known as the SEC-assigned registrant or payor account number) in your wire payment.

To remit your SEC filing fee payment by certified check, cashier's check or money order, you must make them payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. On the front of the check or money order, you must include the SEC's account number (152307768324) and CIK number of the account to which the fee is to be applied. You must mail checks or money orders to the following U.S. Bank addresses. U.S. Bank does not support walk-in deliveries by individuals.

For USPS remittances, they MUST be sent to the following PO Box address.

Securities & Exchange Commission,  
P.O. Box 979081, St. Louis, MO 63197-9000.

Release Nos. 33-8255 (July 22, 2003) [68 FR 44876] and 33-8255A (September 4, 2003) [68 FR 53289] in which we implemented EDGAR Release 8.6; Release No. 33-8409 (April 19, 2004) [69 FR 21954] in which we implemented EDGAR Release 8.7; Release No. 33-8454 (August 6, 2004) [69 FR 49803] in which we implemented EDGAR Release 8.8; Release No. 33-8528 (February 3, 2005) [70 FR 6573] in which we implemented EDGAR Release 8.10; Release No. 33-8573 (May 19, 2005) [70 FR 30899] in which we implemented EDGAR Release 9.0; Release No. 33-8612 (September 21, 2005) [70 FR 57130] in which the Commission granted the authorization to publish the release adopting the reorganized EDGAR Filer Manual; Release No. 33-8633 (November 1, 2005) [70 FR 67350] in which we implemented EDGAR Release 9.2; Release No. 33-8656 (January 27, 2006) [71 FR 5596] in which we implemented EDGAR Release 9.3; and Release No. 33-8834 (August 15, 2007) [72 FR 46559] in which we implemented EDGAR Release 9.7.

<sup>5</sup> See Release No. 33-8885 (January 29, 2008) (Amendment of Procedures for Payment of Fees).

The following address can be used for common carriers such as FedEx, Airborne, DHL, and UPS.

U.S. Bank, Government Lockbox  
979081, 1005 Convention Plaza, SL-  
MO-C2-GL, St. Louis, MO 63101.

For complete details regarding how to remit wire and check payment, please refer to the SEC's "Instructions for Wire Transfer (FEDWIRE) and Check Payment of SEC Filing Fees" (<http://www.sec.gov/info/edgar/fedwire.htm>) on our "Information for EDGAR Filers" Web page. Filers should periodically check both the SEC's and FMS' Web sites for additional information and updates.

Also included in EDGAR Release 9.9 were modifications to the EDGARLite Form TA-1 (Application for registration as a transfer agent filed pursuant to the Securities Exchange Act of 1934) to correct the form version number and TA-2 (Annual Report of Transfer Agent activities filed pursuant to the Securities Exchange Act of 1934) to allow filers to input up to two decimal places for percentage values in their response to Question 5(d) (5(d)(i) Corporate Equity Securities, 5(d)(ii) Corporate Debt Securities, 5(d)(iii) Open-Ended Investment Company Securities, 5(d)(iv) Limited Partnership Securities, 5(d)(v) Municipal Debt Securities, 5(d)(vi) Other Securities). Filers have communicated to the Division of Trading and Markets that their percentages are not necessarily whole numbers, so this modification will help filers provide more accurate answers to these questions. Filers must download the updated EDGARLite TA-1 and TA-2 Submission Templates from the EDGAR OnlineForms Web site to ensure that submissions will be processed successfully. Previous versions of the templates will not work properly.

We have recently proposed to amend Regulation S-T<sup>6</sup> to make mandatory the electronic submission on EDGAR of applications for orders under any section of the Investment Company Act of 1940 ("Investment Company Act") and Regulation E filings of small business investment companies and business development companies.<sup>7</sup> We have updated the EDGAR Filer Manual to describe the EDGAR electronic filing submission types that filers would use for electronic submission on EDGAR if and when we might adopt these

<sup>6</sup> 17 CFR 232.

<sup>7</sup> See Release No. 33-8859 (November 1, 2007) [72 FR 63513] (Rulemaking for EDGAR System; Mandatory Electronic Submission of Applications for Orders under the Investment Company Act and Filings Made Pursuant to Regulation E—proposing release).

proposals. The submission types are as follows:

- In connection with applications for orders under the Investment Company Act,
- 40-OIP (Application under the Investment Company Act submitted pursuant to Investment Company Act Rule 0-2 reviewed by the Office of Insurance Products)
- 40-OIP/A (Amendment to an application under the Investment Company Act submitted pursuant to Investment Company Act Rule 0-2 reviewed by the Office of Insurance Products)
- 40-6B (Application under the Investment Company Act by an employees' securities company submitted pursuant to Investment Company Act Rule 0-2)
- 40-6B/A (Amendment to an application under the Investment Company Act by an employees' securities company submitted pursuant to Investment Company Act Rule 0-2)
- 40-APP (Application under the Investment Company Act submitted pursuant to Investment Company Act Rule 0-2 other than those reviewed by the Office of Insurance Products or submitted by an employees' securities company)
- 40-APP/A (Amendment to an application under the Investment Company Act submitted pursuant to Investment Company Act Rule 0-2 other than those reviewed by the Office of Insurance Products or submitted by an employees' securities company).
- In connection with Regulation E filings,
- 1-E: Notification under Regulation E by small business investment companies and business development companies
- 1-E/A: Amendment to a notification under Regulation E by small business investment companies and business development companies
- 2-E: Report of sales of securities pursuant to Rule 609 under Regulation E
- 2-E/A: Amendment to a report of sales of securities pursuant to Rule 609 under Regulation E
- 1-E AD: Sales material filed pursuant to Rule 607 under Regulation E
- 1-E AD/A: Amendment to sales material filed pursuant to Rule 607 under Regulation E

The following paper submission types became obsolete as of December 17, 2007: 40-6C, 40-6C/A, and 40-RPT. They have been replaced by paper submission types 40-APP, 40-OIP, or 40-6B, as appropriate.

Similarly, the following new paper submission types, 1-E AD and 1-E AD/A, were added.

Revisions were made to support Smaller Reporting Company regulatory relief and simplification.<sup>8</sup> Specifically, we added a "Smaller Reporting Company" indicator to the header of submission types: 10-K, 10-K/A, 10-KT, 10-KT/A, 10-Q, 10-Q/A, 10-QT, 10-QT/A, S-1, S-1/A, S-1MEF, S-3, S-3/A, S-3D, S-3DPOS, S-3MEF, S-4, S-4POS, S-4/A, S-4EF, S-4EF/A, S-4MEF, S-8, S-8POS, S-11, S-11/A, S-11MEF, 10-12B, 10-12B/A, 10-12G, and 10-12G/A; suspending the filing of the following submission types: 10SB12B, 10SB12B/A, 10SB12G, 10SB12G/A, SB-1, SB-1/A, SB-1MEF, SB-2, SB-2/A, and SB-2MEF as of February 4, 2008; suspending the filing of the following submission types: 10QSB and 10QSB/A as of November 3, 2008; and suspending the filing of the following submission types: 10KSB and 10KSB/A as of March 16, 2009. Those filers amendments to filings previously submitted on submission types 10SB12B, 10SB12G, SB-1, SB-1MEF, SB-2, SB-2MEF, 10QSB, or 10KSB may do so using submission type 10-12B, 10-12G, S-1, S-1MEF, S-2, S-2MEF, 10-Q, and 10-K respectively.

Additional changes to the Filer Manual are being made to update obsolete material such as references to Effective Dates that have already passed (e.g., S-3ASR Effective 12/1/2005) and instructions for submitting fees.

The submission templates 1 and 3 were updated to support the aforementioned EDGARLink submission type changes in EDGAR Release 9.8. The new submission types added for applications for orders under any section of the Investment Company Act and Regulation E filings of small business investment companies and business development companies should only be used on EDGAR if and when we might adopt these proposals. However, with regard to the EDGARLink submission type changes made to support Smaller Reporting Company regulatory relief and simplification, filers must download, install, and use the updated EDGARLink software and submission templates to ensure that submissions will be processed successfully. Previous versions of the templates will not work properly. Notice of the update has previously been provided on the EDGAR Filing Web site and on the Commission's public Web site. The discrete updates are reflected on the

EDGAR Filing Web site and in the updated Filer Manual, Volume II. No EDGARLink software or submission template changes were made for EDGAR Release 9.9 implemented on February 4, 2008.

Along with adoption of the Filer Manual, we are amending Rule 301 of Regulation S-T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. We will post electronic format copies on the Commission's Web site; the address for the Filer Manual is <http://www.sec.gov/info/edgar.shtml>. You may also obtain copies from Thomson Financial, the paper document contractor for the Commission, at (800) 638-8241.

Since the Filer Manual relates solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).<sup>9</sup> It follows that the requirements of the Regulatory Flexibility Act<sup>10</sup> do not apply.

The effective date for the updated Filer Manual and the rule amendments is June 11, 2008. In accordance with the APA,<sup>11</sup> we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 9.9 was made available on February 4, 2008. The Commission believes that it is necessary to align the updated Filer Manual with the system upgrade.

#### Statutory Basis

We are adopting the amendments to Regulation S-T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,<sup>12</sup> Sections 3, 12, 13, 14, 15, 23, and 35A of the Exchange Act,<sup>13</sup> Section 319 of the Trust Indenture Act of 1939,<sup>14</sup> and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.<sup>15</sup>

<sup>9</sup> 5 U.S.C. 553(b).

<sup>10</sup> 5 U.S.C. 601-612.

<sup>11</sup> 5 U.S.C. 553(d)(3).

<sup>12</sup> 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

<sup>13</sup> 15 U.S.C. 78c, 78l, 78m, 78n, 78o, 78w, and 78ll.

<sup>14</sup> 15 U.S.C. 77sss.

<sup>15</sup> 15 U.S.C. 80a-8, 80a-29, 80a-30, and 80a-37.

#### List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

#### Text of the Amendment

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

#### PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for part 232 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79t(a), 80a-8, 80a-29, 80a-30, 80a-37, and 7201 *et seq.*; and 18 U.S.C. 1350.  
\* \* \* \* \*

■ 2. Section 232.301 is revised to read as follows:

#### § 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the updated EDGAR Filer Manual, Volume I: "General Information," Version 4 (August 2007). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: "EDGAR Filing," Version 7 (May 2008). Additional provisions applicable to Form N-SAR filers are set forth in the EDGAR Filer Manual, Volume III: "N-SAR Supplement," Version 1 (September 2005). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m., or by calling Thomson Financial at (800) 638-8241. Electronic copies are available on the Commission's Web site. The address for the Filer Manual is <http://www.sec.gov/info/edgar.shtml>. You can also inspect the document at the National Archives and Records

<sup>8</sup> See Release No. 33-8876 (December 19, 2007).

Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Dated: May 30, 2008.

\* \* \* \* \*

By the Commission.

**Florence E. Harmon,**  
*Acting Secretary.*

[FR Doc. E8-13093 Filed 6-10-08; 8:45 am]

**BILLING CODE 8010-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[USCG-2008-0476]

#### **Drawbridge Upper Mississippi River, Clinton, IA; Repair and Maintenance**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Clinton Railroad Drawbridge, Mile 518.0, Clinton, Iowa, across the Upper Mississippi River. The deviation is necessary for the bridge to remain closed-to-navigation for intermittent periods of up to 1 hour and 30 minutes in duration, allowing the bridge owner time to perform necessary repairs to the bridge approaches and adjacent rail bed.

**DATES:** This deviation is effective from 6 a.m. to 8 p.m., July 1, 2008, through July 8, 2008, and from 6 a.m. to 8 p.m., July 16, 2008, through July 22, 2008.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-0476 and are available online at [www.regulations.gov](http://www.regulations.gov). They are also available for inspection or copying at two locations: The Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Robert A. Young Federal Building, Room 2.107F, 1222 Spruce Street, St. Louis, MO 63103-2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**  
Roger K. Wiebusch, Bridge Administrator, (314) 269-2378.

**SUPPLEMENTARY INFORMATION:** The Union Pacific Railroad Company requested a temporary deviation for the Clinton Railroad Drawbridge, mile 518.0, at Clinton, Iowa, across the Upper Mississippi River; to intermittently remain in the closed-to-navigation position for periods of up to 1 hour and 30 minutes in duration to facilitate needed maintenance and repairs. The Clinton Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart. In order to facilitate the needed work, the drawbridge must be kept in the closed-to-navigation position. This deviation allows the bridge to intermittently remain in the closed-to-navigation position for periods of up to 1 hour and 30 minutes in duration, from 6 a.m. to 8 p.m., July 1, 2008, through July 8, 2008, and from 6 a.m. to 8 p.m., July 16, 2008, through July 22, 2008.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

The Clinton Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 18.7 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(e), the drawbridge shall return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 2, 2008.

**Roger K. Wiebusch,**  
*Bridge Administrator.*

[FR Doc. E8-13085 Filed 6-10-08; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2008-0448]

RIN 1625-AA00

#### **Temporary Safety Zone: Richland Regatta Hydroplane Races, Howard Amon Park, Richland, WA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the Richland Regatta Hydroplane Race to be held on the waters of the Columbia River in the vicinity of Howard Amon Park, Richland, WA. The safety zone will limit the movement of non-participating vessels in the race area. This temporary rule is needed to provide for the safety of life on navigable waters during the event.

**DATES:** This regulation is effective from 9 a.m. to 5 p.m. on June 14 and 15, 2008, unless canceled earlier through a broadcast notice to mariners. The Captain of the Port Portland is taking this action to safeguard individuals and vessels.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-0448 and are available online at [www.regulations.gov](http://www.regulations.gov). They are also available for inspection or copying at two locations: the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and Coast Guard Sector Portland, 6767 N. Basin Ave., Portland, OR 97217 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** BM2 Joshua Lehner, c/o Captain of the Port Portland, 6767 N. Basin Ave, Portland, OR 97217-3992, and (503) 240-9311.

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The emergent and dynamic nature of the event did not allow previous notice. Publishing a NPRM would be contrary

to public interest since immediate action is necessary to ensure the safety of vessels and spectators. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event. For this reason, following the normal rulemaking procedures in this case would be impracticable and contrary to the public.

### Background and Purpose

The Coast Guard is establishing a temporary safety zone to allow for a safe racing event. This event occurs on the Columbia River in the vicinity of Howard Amon Park in Richland, WA and is scheduled to start at 9 a.m. and last until 5 p.m. on June 14 and 15, 2008. This event may result in a number of recreational vessels congregating near the hydroplane races. The hydroplane race poses several dangers to the public including excessive noise, objects falling from any accidents, and hydroplanes racing at high speeds in proximity to other vessels. Accordingly, the Safety Zone is needed to protect watercraft and their occupants from safety hazards associated with the event. This safety zone will be enforced by representatives of the Captain of the Port Portland. The Captain of the Port may be assisted by other federal, state, and local agencies.

### Discussion of Rule

This temporary rule will create a safety zone to assist in minimizing the inherent dangers associated with hydroplane races. These dangers include, but are not limited to, excessive noise, race craft traveling at high speed in close proximity to one another and to spectator craft, and the risk of airborne objects from any accidents associated with hydroplanes. In the event that hydroplanes require emergency assistance, rescuers must have immediate and unencumbered access to the craft. The Coast Guard, through this action, intends to promote the safety of personnel, vessels, and facilities in the area. Due to these concerns, public safety requires these regulations to provide for the safety of life on the navigable waters.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of

the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the safety zone established by this rule encompasses an area on the Columbia River near Howard Amon Park in Richland, WA, rarely frequented by commercial navigation. Additionally, the Patrol Commander may, upon request, allow the transit of commercial vessels through the safety zone when it is safe to do so. This regulation is established for the benefit and safety of the recreational boating public, and any negative recreational boating impact is offset by the benefits of allowing the hydroplanes to race. This rule will be enforced from 9 a.m. to 5 p.m. each day on June 14 and 15, 2008. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Columbia River during the time mentioned under *Background and Purpose*. This safety zone will not have a significant economic impact on a substantial number of small entities due to its short duration, small area, and the ability of the Patrol Commander to allow commercial vessels to transit the safety zone when safe to do so. The only vessels likely to be impacted will be recreational boaters, small passenger vessel operators, commercial barge operators, and a ferry that runs through the regulated area twice a day. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

### Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health



Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and

have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because it establishes a safety zone. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A temporary section in 165.T13–031 is added to read as follows:

#### § 165.T13–031 Safety Zone; Richland Regatta Hydroplane Races Howard Amon Park, Richland, Washington.

(a) Location. The following area is a safety zone:

(1) The waters of the Columbia River from bank to bank in the vicinity of Howard Amon Park on the Columbia River in Richland, Washington commencing at the Interstate 182 Bridge and continuing up river Northward 3.0 miles and terminating at the Columbia River Mile 339.

(b) Enforcement period. This rule will be in effect from 9 a.m. to approximately 5 p.m. on June 14, 2008 and June 15, 2008, in the described waters of the Columbia River in Richland, Washington.

(c) Regulations. In accordance with the general regulations in Section 165.23 of this part, no person or vessel not participating in the actual hydroplane race may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives. Vessels and persons granted authorization to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his designated representatives.

(d) Vessels wishing to request permission to enter the safety zone may

contact the official patrol on VHF Channel 16 or by calling 503–240–9311.

Dated: May 23, 2008.

**F.G. Myer,**

*Captain, U.S. Coast Guard, Captain of the Port Portland.*

[FR Doc. E8–13092 Filed 6–10–08; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 82

[EPA–HQ–OAR–2007–0297; FRL–8577–9]

**RIN 2060–AO44**

### Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2008

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** With this action, EPA is allocating essential use allowances for import and production of Class I stratospheric ozone-depleting substances (ODSs) for calendar year 2008. Essential use allowances enable a person to obtain controlled Class I ODSs as part of an exemption to the regulatory ban on the production and import of these chemicals, which became effective as of January 1, 1996. EPA allocates essential use allowances for exempted production or import of a specific quantity of Class I ODSs solely for the designated essential purpose. The allocation in this action is 27.0 metric tons (MT) of chlorofluorocarbons (CFCs) for use in metered dose inhalers (MDIs) for 2008.

**DATES:** This final rule is effective June 11, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2007–0297. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. This Docket Facility is open from 8:30 a.m.



to 4:30 p.m., Monday through Friday, excluding legal holidays. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

#### FOR FURTHER INFORMATION CONTACT:

Kirsten Cappel, by regular mail: U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC 20460; by courier service or overnight express: 1310 L Street, NW., Room 1047C, Washington, DC 20005; by telephone: (202) 343-9556; by fax: (202) 343-2338; or by e-mail: [cappel.kirsten@epa.gov](mailto:cappel.kirsten@epa.gov).

#### SUPPLEMENTARY INFORMATION

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#### I. Basis for Allocating Essential Use Allowances

##### A. What are essential use allowances?

Essential use allowances are allowances to produce or import certain ODSs in the United States for purposes that have been deemed "essential" by the U.S. Government and by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol).

The Montreal Protocol is an international agreement aimed at

reducing and eliminating the production and consumption<sup>1</sup> of ODSs. The elimination of production and consumption of Class I ODSs has been accomplished through adherence to phase-out schedules for specific Class I ODSs,<sup>2</sup> which include CFCs, halons, carbon tetrachloride, and methyl chloroform. As of January 1, 1996, production and import of most Class I ODSs were phased out in developed countries, including the United States.

However, the Montreal Protocol and the Clean Air Act (the Act) provide exemptions that allow for the continued import and/or production of Class I ODSs for specific uses. Under the Montreal Protocol, exemptions may be granted for uses that are determined by the Parties to be "essential." Decision IV/25, taken by the Parties to the Protocol in 1992, established criteria for determining whether a specific use should be approved as essential, and set forth the international process for making determinations of essentiality. The criteria for an essential use, as set forth in paragraph 1 of Decision IV/25, are the following:

"(a) That a use of a controlled substance should qualify as 'essential' only if:

(i) It is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and

(ii) There are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health;

(b) That production and consumption, if any, of a controlled substance for essential uses should be permitted only if:

(i) All economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and

(ii) The controlled substance is not available in sufficient quantity and quality from existing stocks of banked or recycled controlled substances, also bearing in mind the developing countries' need for controlled substances."

##### B. Under what authority does EPA allocate essential use allowances?

Title VI of the Act implements the Montreal Protocol for the United States. Section 604(d) of the Act authorizes EPA to allow the production of limited quantities of Class I ODSs after the phaseout date for the following essential uses:

(1) Methyl chloroform, "solely for use in essential applications (such as

<sup>1</sup> "Consumption" is defined as the amount of a substance produced in the United States, plus the amount imported into the United States, minus the amount exported to Parties to the Montreal Protocol (see Section 601(6) of the Clean Air Act).

<sup>2</sup> Class I ozone depleting substances are listed at 40 CFR Part 82 subpart A, appendix A.

nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal fatigue) for which no safe and effective substitute is available." Under the Act, this exemption was available only until January 1, 2005. Prior to that date, EPA issued essential use allowances for methyl chloroform to the U.S. Space Shuttle and Titan Rocket programs.

(2) Medical devices (as defined in section 601(8) of the Act), "if such authorization is determined by the Commissioner [of the Food and Drug Administration], in consultation with the Administrator [of EPA] to be necessary for use in medical devices." EPA issues essential use allowances to manufacturers of metered dose inhalers (MDIs) that use CFCs as propellant for the treatment of asthma and chronic obstructive pulmonary disease (COPD).

(3) Aviation safety, for which limited quantities of halon-1211, halon-1301, and halon-2402 may be produced "if the Administrator of the Federal Aviation Administration, in consultation with the Administrator [of EPA] determines that no safe and effective substitute has been developed and that such authorization is necessary for aviation safety purposes." Neither EPA nor the Parties have ever granted a request for essential use allowances for halon because in most cases alternatives are available and existing quantities of this substance are large enough to provide for any needs for which alternatives have not yet been developed.

An additional essential use exemption under the Montreal Protocol, as agreed in Decision X/19, is the general exemption for laboratory and analytical uses. This exemption is reflected in EPA's regulations at 40 CFR Part 82, Subpart A. While the Act does not specifically provide for this exemption, EPA has determined that an exemption for essential laboratory and analytical uses is allowable under the Act as a *de minimis* exemption. The *de minimis* exemption is addressed in EPA's final rule of March 13, 2001 (66 FR 14760-14770). The Parties to the Protocol subsequently agreed (Decision XI/15) that the general exemption does not apply to the following uses: Testing of oil and grease, and total petroleum hydrocarbons in water; testing of tar in road-paving materials; and forensic finger-printing. EPA incorporated this exemption at Appendix G to Subpart A of 40 CFR Part 82 on February 11, 2002 (67 FR 6352). In a December 29, 2005, final rule, EPA extended the general exemption for laboratory and analytical uses through December 31, 2007 (70 FR 77048), in accordance with Decision

XV/8 of the Parties to the Protocol. In a notice of proposed rulemaking published in the **Federal Register** on September 13, 2007 (72 FR 52332), EPA proposed to extend the global laboratory and analytical use exemption beyond December 31, 2007 contingent upon and consistent with future anticipated action by the Parties to the Montreal Protocol. At the 19th Meeting of the Parties in September 2007, the Parties agreed to extend the global laboratory and analytical use exemption through December 31, 2011 in Decision XIX/18. In a December 27, 2007 final rulemaking EPA took action to (1) extend the laboratory and analytical use exemption to December 31, 2011 for specific laboratory uses, (2) apply the laboratory and analytical use exemption to the production and import of methyl bromide, and (3) eliminate the testing of organic matter in coal from the laboratory and analytical use exemption (72 FR 73264).

*C. What is the process for allocating essential use allowances?*

Before EPA will allocate an essential use allowance, the Parties to the Montreal Protocol must first authorize the United States' request to produce or import essential Class I ODSs. The procedure set out by Decision IV/25 calls for individual Parties to nominate essential uses and the total amount of ODSs needed for those essential uses on an annual basis. The Montreal Protocol's Technology and Economic Assessment Panel (TEAP) evaluates the nominated essential uses and makes recommendations to the Parties. The Parties make the final decisions at their annual meeting on whether to authorize a Party's essential use nomination. This nomination-and-authorization cycle begins approximately two years before the year in which the allowances would be in effect. The allowances allocated through this action were nominated by the United States in January 2006.

Once the Parties authorize the U.S. nomination, EPA allocates essential use allowances to specific entities through notice-and-comment rulemaking in a manner consistent with the Act. For MDIs, EPA requests information from manufacturers about the number and type of MDIs they plan to produce, as well as the amount of CFCs necessary for production. EPA then forwards the information to the Food and Drug Administration (FDA), which determines the amount of CFCs for MDIs in the coming calendar year that are necessary to protect public health. Based on FDA's determination, EPA proposes allocations for each eligible entity. Under the Act and the Montreal

Protocol, EPA allocates essential use allowances in quantities that together are below or equal to the total amount authorized by the Parties. EPA will not allocate essential use allowances in amounts higher than the total authorized by the Parties. For 2008, the Parties authorized the United States to allocate up to 385 MT of CFCs for essential uses. In the nomination for 2008 essential use allowances, the United States did not request CFCs for use in MDIs where the sole active ingredient is albuterol. In a notice of proposed rulemaking published in the **Federal Register** on June 12, 2007 (72 FR 32269), EPA proposed to allocate 27.0 MT of CFC-114 for the production of epinephrine MDIs for the calendar year 2008. In this final rule, EPA is allocating 27.0 MT of CFC-114 for the production of epinephrine MDIs for 2008.

## II. Response to Comments

EPA received comments from four entities on the proposed rule.

One commenter opposed EPA's proposed allocation and opposed allowing MDI manufacturers to produce any MDIs that damage the ozone layer. The commenter further stated that MDI manufacturers should research and adopt alternatives that are healthful for all.

The Parties grant essential use exemptions contingent on a finding that the use for which an exemption is being requested is essential for health, safety, or the functioning of society, and that there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of health or the environment. FDA regulations at 21 CFR 2.125 provide criteria for removing ODS-containing medical devices from the list of essential uses (see also FDA's July 24, 2002 final rule at 67 FR 48370). EPA notes that the transition to ozone-safe alternatives is well underway and that, for example, the allocation of essential use allowances for CFC-based MDIs decreased from 3,136.3 MT in 2000 to 167.0 MT in 2007. FDA, in consultation with EPA, has determined that 27.0 MT of CFC-114 is necessary in 2008 for the production of epinephrine MDIs. As therapeutic alternatives become available, FDA will, consistent with its regulations, continue to initiate rulemakings for removal of essential use designations for certain MDIs in a manner that is protective of public health.

With respect to the comment that MDI manufacturers should research alternatives to replace CFC MDIs, EPA agrees that companies applying for

essential use allocations to manufacture essential use MDIs should demonstrate ongoing research and development of alternatives to CFC MDIs. EPA honors commitments under the Montreal Protocol to demonstrate progress in the transition to alternatives by considering this information in the application and nomination phase of the essential use process. Decision VIII/10, taken in 1997, provides for applicants to submit information on the status of research and development into alternatives, and Decision XIX/13, taken in September 2007, provides for applicants to submit related information describing their progress in transitioning to CFC-free formulations. EPA will continue to consider companies' progress in the transition to CFC-free inhalers as a factor in the essential use nomination process.

A second commenter observed that for the 2008 proposed allocation EPA used a "new criterion" under which allowances would be made available only to companies that held less than one year's stockpile of essential use CFCs. The commenter observed that if its allocation for 2009—as well as its allocation for 2008—were zero, it would most likely not have sufficient CFC supplies to meet anticipated patient demand for other moieties during 2009. (The commenter noted that FDA has proposed, and not yet finalized, a rule to remove the essential use designation for those moieties as of December 31, 2009, but that it would need an allocation for 2009 regardless.)

The commenter also noted that it is a contract manufacturer that makes products for clients. As a result, according to the commenter, although it could purchase CFCs from the pre-1996 stockpile to supplement its CFC supply, such action is not reasonable. The commenter explained that the price of pre-1996 CFCs is not regulated and that as a result, the material is available, if at all, only at higher prices than CFCs manufactured with essential use allowances. The commenter stated that it cannot absorb the higher cost of the pre-1996 material because the prices of its finished products are fixed.

With respect to the comment that EPA used a new approach for the 2008 proposal, EPA responds that EPA and FDA used the same procedure for 2008 as for prior years to determine the essential use allocation for each requesting MDI company. That is, to assess the amount of new CFC production required to satisfy 2008 essential uses, EPA and FDA applied the terms of Decision XVII/5, including the provision that Parties should allocate such that manufacturers of

MDIs maintain no more than one-year operational supply of CFCs for essential uses. FDA articulated to EPA that in making its determination for 2008, FDA calculated the quantity of CFCs that a manufacturer needed to produce essential use MDIs for the year and subtracted from that quantity any CFC stocks owned by the MDI manufacturer exceeding a one-year operational supply. The remainder, if more than zero, was the quantity of newly produced or imported CFCs needed by that manufacturer. In addition, FDA informed EPA that consistent with the language of Decision XVII/5, FDA evaluated each company on an individual basis, rather than the aggregate CFC supplies owned by all entities. The use of this approach has been previously described in EPA's 2006 and 2007 final rulemakings for allocating essential use allowances, 71 FR 58504 and 72 FR 32212, respectively.

With respect to the comment about not being able to meet patient demand in 2009 if its allocation in 2009 is zero, EPA and FDA will assess 2009 allocations beginning in 2008 once more current information is available regarding the medical need for CFCs in MDIs. However, EPA expects that it and FDA will follow an approach for 2009 that is similar to that used for 2008 and previous control periods.

Under this approach, FDA, in close collaboration with EPA, will undertake a thorough and comprehensive analysis of a number of factors to determine the amount of CFCs necessary for the manufacture of essential use MDIs for the 2009 control period. First, FDA would evaluate the medical necessity by assessing the number of CFC MDIs necessary to protect public health in the U.S. (including the consideration of current data on the prevalence of asthma and COPD) and the quantity of CFCs necessary to ensure the manufacture and continuous availability of those MDIs. Second, FDA would analyze the most current data available regarding the existing inventory of CFCs held by each MDI manufacturer. Third, FDA would account for the implementation of the terms of Decision XVII/5, including the provision that FDA allocate such that manufacturers maintain no more than a one-year operational supply. Finally, FDA would

consider how manufacturers' existing CFC supplies would be drawn down as they manufacture essential use MDIs throughout the year.

In response to the comment regarding potential outcomes of the FDA rulemaking that is now in the proposal stage, EPA asserts that concerns about the potential need for additional allowances would be best addressed in its essential use rulemaking for the 2009 control period.

With respect to the commenter's assertion that it cannot afford the cost of pre-January 1, 1996 CFCs, EPA and FDA do not regulate the price of CFCs, whether in the pre-January 1, 1996 stockpile or produced or imported post-January 1, 1996 with essential use allowances. Rather, market mechanisms determine the price of CFCs. As discussed above, if FDA determines that there is a medical need for new production of CFCs for the manufacture of essential use MDIs, then FDA will recommend allocation of the necessary amount to the requesting MDI manufacturer to make those MDIs. That MDI manufacturer is permitted to purchase newly produced and/or imported CFCs up to the amount that it has been allocated. EPA and FDA would not expect a MDI manufacturer to need pre-January 1, 1996 CFCs when FDA has determined that that manufacturer should be allocated essential use allowances.

To supplement its CFC allocation for a particular year, an MDI manufacturer may purchase any pre-January 1, 1996 CFCs that are available in the marketplace, or it may acquire essential use CFCs through a transfer with another manufacturer (subject to EPA regulations for such transfers). However, EPA notes that in making determinations for annual essential use allocations for MDI manufacturers, FDA takes into account the entirety of each MDI manufacturer's stocks of CFCs, including pre- and post-January 1, 1996 stocks and CFCs acquired through transfers.

A third commenter supported EPA's proposed allocation and stated that it is sufficient to protect human health and provide a smooth transition to non-CFC alternatives, consistent with the principles and obligations of the Montreal Protocol, and that it conforms with the Clean Air Act and other U.S.

law. The commenter stated that according to publicly available information, the quantity of pharmaceutical-grade CFCs in the United States is sufficient to meet patient needs and that EPA's proposed amount will provide a smooth transition to CFC-free alternatives. In particular, the commenter stated that the zero allocation for CFC-albuterol, which started with the 2007 allocation, will allow for the gradual phase-down of CFC albuterol on the market, and is optimal for patient care. The commenter also noted that the proposal will foster a smooth transition by not allocating CFCs to other CFC MDI products where there are CFC-free therapeutic alternatives available.

A fourth commenter, who submitted comments claimed as CBI, opposed EPA's proposed allocation as too low and requested additional essential use allowances for calendar year 2008. A redacted version of these comments has been placed in the docket. In the public version of the comments, the commenter stated that based on an internal assessment of its current stockpile, it would not be able to meet production needs of Primatene Mist® if EPA did not grant it essential use allowances for calendar year 2008. To further evaluate the needs of the commenter, on August 8, 2007, EPA sent a letter to the commenter requesting additional information about its current and projected stockpile of CFCs, as well as current and projected production of Primatene Mist®. A copy of this letter is available in the docket. On August 21, 2007, the commenter sent a letter to EPA withdrawing its comments on the 2008 proposed rulemaking. In that letter the commenter noted that its withdrawal of its 2008 comments on the proposed rulemaking should not affect its request for essential use allowances in future years. A copy of this letter is also available in the docket.

### III. Allocation of Essential Use Allowances for Calendar Year 2008

With this action, EPA is allocating essential use allowances for calendar year 2008 to the entity listed in Table 1. These allowances are for the production or import of the specified quantity of Class I controlled substances solely for the specified essential use.

TABLE 1.—ESSENTIAL USE ALLOWANCES FOR CALENDAR YEAR 2008

Company	Chemical	2008 Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong Pharmaceuticals .....	CFC-114 (production of epinephrine MDIs only) .....	27.0

#### IV. Statutory and Executive Order Reviews

##### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action” because it raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

##### B. Paperwork Reduction Act

This action does not impose any new information collection burden. The recordkeeping and reporting requirements included in this action are already included in an existing information collection burden and this action does not make any changes that would affect the burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR Part 82, Subpart A under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0170. The OMB control numbers for EPA’s regulations are listed in 40 CFR part 9.

##### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of this rule on small entities, small entities are defined as: (1) A small business that is primarily engaged in pharmaceutical preparations manufacturing (NAICS code 325412) and that has fewer than 750 employees (based on Small Business

Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the proposed rule on small entities.” 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This rule provides an otherwise unavailable benefit to those companies that are receiving essential use allowances. We have therefore concluded that this final rule will relieve regulatory burden for all small entities.

##### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally

requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative, if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector, since it merely provides exemptions from the 1996 phase-out of Class I ODSs. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, because this rule merely allocates essential use exemptions to entities as an exemption to the ban on production and import of Class I ODSs.

##### E. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct

effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This final rule does not have tribal implications, as specified in Executive Order 13175. This rule affects only the companies that requested essential use allowances. Thus, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045, “Protection of Children from Environmental Health risks and Safety Risks” (62 FR 19885, April 23, 1997), applies to any rule that (1) is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health and safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it implements the phaseout schedule and exemptions established by Congress in Title VI of the Clean Air Act.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule affects only the pharmaceutical companies that requested essential use allowances of CFCs.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it affects the level of environmental protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects

on any population, including any minority or low-income population. Any stratospheric ozone depletion that results from this final rule will impact all affected populations equally because ozone depletion is a global environmental problem with environmental and human effects that are, in general, equally distributed across geographical regions in the U.S.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Therefore, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective June 11, 2008.

**V. Judicial Review**

Under section 307(b)(1) of the Act, EPA finds that these regulations are of national applicability. Accordingly, judicial review of the action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of the action in the **Federal Register**. Under section 307(b)(2), the requirements of this rule may not be challenged later in judicial proceedings brought to enforce those requirements.

**VI. Effective Date of This Final Rule**

Section 553(d) of the Administrative Procedures Act (APA) generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. This final rule is issued under section 307(d) of the CAA, which states, “The provisions of section 553 through 557 of Title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies.” Thus, section 553(d) of the APA does not apply to this rule. EPA nevertheless is acting consistently with the policies underlying APA section 553(d) in making this rule effective June 11, 2008. APA section 553(d) provides an exception for any action that grants or recognizes an exemption or relieves a restriction. Because this action grants an exemption to the phaseout of

production and consumption of CFCs, EPA is making this action effective immediately to ensure continued availability of CFCs for medical devices.

#### List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Imports, Ozone, Reporting and recordkeeping requirements.

Dated: June 5, 2008.

Stephen L. Johnson,  
Administrator.

■ 40 CFR part 82 is amended as follows:

#### PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7601, 7671–7671q.

#### Subpart A—Production and Consumption Controls

■ 2. Section 82.8 is amended by revising the table in paragraph (a) to read as follows:

#### § 82.8 Grants of essential use allowances and critical use allowances.

(a) \* \* \*

TABLE I.—ESSENTIAL USE ALLOWANCES FOR CALENDAR YEAR 2008

Company	Chemical	2008 Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong Pharmaceuticals .....	CFC-114 (production of epinephrine MDIs only) .....	27.0

\* \* \* \* \*

[FR Doc. E8–13088 Filed 6–10–08; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 180

[EPA–HQ–OPP–2007–1021; FRL–8365–6]

#### Flutolanil; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for indirect or inadvertent residues of flutolanil in or on wheat and soybeans. Nichino America, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective June 11, 2008. Objections and requests for hearings must be received on or before August 11, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–1021. To access the electronic docket, go to <http://www.regulations.gov>, select “Advanced Search,” then “Docket Search.” Insert the docket ID number where indicated and select the “Submit” button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in

the docket index available in [www.regulations.gov](http://www.regulations.gov). Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Lisa Jones, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9424; e-mail address: [jones.lisa@epa.gov](mailto:jones.lisa@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).

- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

##### B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of EPA’s tolerance regulations at 40 CFR part 180 through the Government Printing Office’s pilot e-CFR site at <http://www.gpoaccess.gov/ecfr>.

##### C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions

provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2007-1021 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before August 11, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in

**ADDRESSES.** Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA-HQ-OPP-2007-1021, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

## II. Petition for Tolerance

In the **Federal Register** of March 12, 2008 (73 FR 13225) (FRL-8354-6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F6159) by Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808. The petition requested that 40 CFR 180.484 be amended by establishing tolerances for indirect or inadvertent residues of the fungicide flutolanil, *N*-(3-(1-methylethoxy)phenyl)-2-(trifluoromethyl)benzamide, and its metabolite, *M*-4, desisopropyl flutolanil *N*-(3-hydroxyphenyl)-2-(trifluoromethyl)benzamide, expressed as 2-(trifluoromethyl) benzoic acid and calculated as flutolanil, in or on soybean forage at 9.0 parts per million (ppm), soybean hay at 2.0 ppm, soybean seed at 0.20 ppm, wheat bran at 0.3 ppm, wheat forage at 2.0 ppm, wheat grain at

0.10 ppm, wheat hay at 1.0 ppm, and wheat straw at 0.30 ppm.

That notice referenced a summary of the petition prepared by Nichino America, Inc., the registrant, which is available to the public in the docket, <http://www.regulations.gov>. One comment was received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has revised all proposed tolerances except for soybean seed. The reasons for these changes are explained in Unit IV.D.

The time-limited tolerances exemptions for rice, grain; rice, straw; rice, bran; and rice, hulls are removed from 40 CFR 180.484 because the expiration date of December 31, 2000 has passed.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for indirect or inadvertent residues of flutolanil, *N*-(3-(1-methylethoxy)phenyl)-2-(trifluoromethyl)benzamide, and its metabolites converted to 2-(trifluoromethyl) benzoic acid and calculated as flutolanil, in or on soybean forage at 8.0 ppm, soybean hay at 2.5 ppm, soybean seed at 0.20 ppm, wheat forage at 2.5 ppm, wheat grain at 0.05 ppm, wheat hay at 1.2 ppm, wheat straw

at 0.20 ppm, and wheat bran at 0.20 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

### A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The toxicology studies conducted on flutolanil demonstrate few or no biologically significant toxic effects. Liver effects in rats included increases in absolute and relative liver weight in the absence of clinical chemistry and/or histopathology findings. In dogs, there was an elevation in alkaline phosphatase and cholesterol levels together with dose-related increases in absolute and relative liver weights, slightly enlarged livers, and an increase in severity of glycogen deposition. The increased liver weights are considered to be an adaptive response to flutolanil treatment and not an adverse effect. Based on the lack of evidence of carcinogenicity and the lack of evidence of mutagenicity, flutolanil is classified as "not likely to be carcinogenic to humans".

Flutolanil is not neurotoxic, and it is not a developmental or reproductive toxicant. No maternal, reproductive, or developmental toxicity was observed at the limit dose. There was no evidence for increased susceptibility of rat or rabbit fetuses to *in utero* exposure or rat pups to post-natal exposure to flutolanil. No toxic effects were observed in studies in which flutolanil was administered by the dermal route of exposure at the limit dose.

Specific information on the studies received and the nature of the adverse effects caused by flutolanil as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <http://www.regulations.gov> in the document "Flutolanil, Human Health Risk Assessment. Requests for Inadvertent or Indirect Tolerances for use on soybean, wheat, corn and cotton, November 27, 2007" beginning on page 7 in docket ID number EPA-HQ-OPP-2007-1021.

### B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for



derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the

human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <http://www.epa.gov/pesticides/factsheets/riskassess.htm>.

A summary of the toxicological endpoints for flutolanil used for human risk assessment is shown in the following table.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUTOLANIL FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (all populations)			No appropriate toxicological endpoint attributable to a single exposure (dose) was identified from the oral toxicity studies including developmental toxicity studies in rats and rabbits.
Chronic dietary (all populations)	NOAEL = 50 mg/kg/day UF <sub>A</sub> = 10x UF <sub>H</sub> = 10x FQPA SF = 1x	Chronic RfD = 0.5 mg/kg/day cPAD = 0.5 mg/kg/day	2-year chronic study in dogs, MRID no. 40342922 LOAEL = 250 mg/kg/day based on increased incidence of clinical toxic signs (emesis, salivation, and soft stool)
Cancer (oral, dermal, inhalation)	“Not likely to be carcinogenic to humans” based on the absence of significant tumor increases in two adequate rodent carcinogenicity studies.		

UF<sub>A</sub> = extrapolation from animal to human (interspecies). UF<sub>H</sub> = potential variation in sensitivity among members of the human population (intraspecies). UF<sub>L</sub> = use of a LOAEL to extrapolate a NOAEL. UF<sub>S</sub> = use of a short-term study for long-term risk assessment. UF<sub>DB</sub> = to account for the absence of data or other data deficiency. FQPA SF = FQPA Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern.

### C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to flutolanil and metabolites, EPA considered exposure under the petitioned-for tolerances as well as all existing flutolanil tolerances in (40 CFR 180.484). EPA assessed dietary exposures from flutolanil in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

No such effects were identified in the toxicological studies for flutolanil; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture (USDA) 1994–1996 and 1998 CSFII. As to residue levels in food,

EPA assumed that tolerance-level residues were used for all crops.

iii. *Cancer.* Flutolanil has been classified as “Not likely to be Carcinogenic to Humans” therefore a cancer dietary exposure assessment was not performed.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for flutolanil in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of flutolanil. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

The Agency used the First Approximation Rice Model (FARM) to estimate pesticide concentrations in surface water after applying flutolanil on rice and Screening Concentrations in Ground Water (SCI-GROW), which predicts pesticide concentrations in ground water. In general, EPA will use

Generic Expected Environmental Concentrations (GENEEC) (a Tier 1 model) before using Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) (a Tier 2 model) for a screening-level assessment for surface water, but given the unique hydrological issues arising from pesticide application to rice paddies, EPA used the FARM rather than GENEEC or PRZM/EXAMS for surface water estimates.

Based on the SCI-GROW model, and the FARM (to estimate pesticide concentrations in surface water after applying flutolanil on rice) the estimated environmental concentrations (EECs) of flutolanil for acute exposures are estimated to be 3.8 parts per billion (ppb) for surface water and 0.34 ppb for ground water. The EECs for chronic exposures are estimated to be 3.8 ppb for surface water and 0.34 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the



water concentration of value 3.8 ppb was used to access the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Flutolanil is currently registered for the following uses that could result in residential exposures: Turf grass and ornamental plants. Although residential (non-occupational) exposure exists, a quantitative exposure assessment was not conducted since no toxicological endpoint attributable to acute, short-term or intermediate-term exposure have been identified and the current use pattern does not indicate chronic or long-term exposure (6 or more months of continuous exposure) potential.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found flutolanil to share a common mechanism of toxicity with any other substances, and flutolanil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that flutolanil does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at <http://www.epa.gov/pesticides/cumulative>.

#### D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure (MOE) unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when

reliable data available to EPA support the choice of a different factor.

#### 2. *Prenatal and postnatal sensitivity.*

There was no evidence of increased susceptibility of rat or rabbit fetuses to *in utero* exposure or rat pups to postnatal exposure to flutolanil. Flutolanil is not neurotoxic, and it is not a developmental or reproductive toxicant. No maternal, reproductive, or developmental toxicity was observed at the limit dose.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

- i. The toxicity database for flutolanil is complete.
- ii. There is no indication that flutolanil is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.
- iii. There is no evidence that flutolanil results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.
- iv. There are no residual uncertainties identified in the exposure data bases. The dietary food exposure assessments were performed based on 100 percent crop treated (PCT) and tolerance-level residues.

EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to flutolanil in drinking water. The level of residential exposure was not assessed as flutolanil was found to have no toxic endpoints corresponding to the duration of exposures in the residential setting. These assessments will not underestimate the exposure and risks posed by flutolanil.

#### E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the

product of all applicable UFs is not exceeded.

1. *Acute risk.* No appropriate endpoint attributable to a single exposure (dose) was identified from oral toxicity studies for the general population or for females aged thirteen years or older. Flutolanil is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to flutolanil and metabolites from food and water will utilize 1% of the cPAD for the most highly exposed population subgroup (infants less than one year old). Based on the use pattern, chronic residential exposure to residues of flutolanil is not expected.

3. *Short and intermediate-term risk.* Short-term and intermediate-term aggregate exposure assessment takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Because no flutolanil toxicity from short-term or intermediate-term dermal and inhalation exposure was identified, flutolanil is not expected to pose a short-term or intermediate-term dermal or inhalation risk.

4. *Aggregate cancer risk for U.S. population.* EPA has classified flutolanil as "not likely" to be a human carcinogen.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to flutolanil residues.

## IV. Other Considerations

### A. Analytical Enforcement Methodology

An adequate common moiety high performance liquid chromatography/mass spectrometry (HPLC/MS) method (Method AU/95R/04) is available which determines residues of flutolanil and metabolites as 2-trifluoromethyl benzoic acid (2-TFBA). The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

### B. International Residue Limits

Codex maximum residue limits (MRLs) are established for residues of flutolanil *per se* in rice commodities at 1–10 ppm, and in livestock commodities at 0.05–0.2 ppm. There are no wheat or soybean Codex MRL's.

Codex MRL's differ from established tolerances for the following commodities: Rice, grain; cattle, goat and hog kidney, and cattle, goat and hog liver. No Canadian or Mexican MRLs have been established for flutolanil.

The Agency's tolerance levels are based on analyses of the residue field trial data using EPA's Tolerance Spreadsheet in accordance with the Agency's Guidance for Setting Pesticide Tolerances Based on Field Trial Data, Standard Operating Procedure (SOP).

#### C. Response to Comments

One comment was received from a private citizen objecting to the establishment of tolerances for flutolanil. The commenter criticized EPA's reliance on toxicology testing on animals. The Agency has received, and responded to, similar comments from this commenter on numerous previous occasions. Refer to **Federal Register** 70 FR 37686 (June 30, 2005), 70 FR 1354 (January 7, 2005) and, 69 FR 63096 (October 29, 2004) for the Agency's response to these objections.

#### D. Revisions to Petitioned-For Tolerances

Based upon review of the data supporting the petition, EPA determined that the proposed tolerances should be revised as follows: Soybean, forage decreased from 9.0 ppm to 8.0 ppm; soybean, hay increased from 2.0 ppm to 2.5 ppm; wheat, forage increased from 2.0 ppm to 2.5 ppm; wheat, grain decreased from 0.1 ppm to 0.05 ppm; wheat, hay increased from 1.0 ppm to 1.2 ppm; wheat, straw decreased from 0.3 ppm to 0.20 ppm; and wheat, bran decreased from 0.3 ppm to 0.20 ppm. EPA revised these tolerance levels based on analysis of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's Guidance for Setting Pesticide Tolerances Based on Field Trial Data Standard Operating Procedure (SOP).

#### V. Conclusion

Therefore, tolerances are established for indirect or inadvertent residues of flutolanil, N-(3-(1-methylethoxy)phenyl)-2-(trifluoromethyl)benzamide, and its metabolites converted to 2-(trifluoromethyl) benzoic acid and calculated as flutolanil, in or on soybean, forage at 8.0 ppm, soybean, hay at 2.5 ppm, soybean, seed at 0.20 ppm, wheat, forage at 2.5 ppm, wheat, grain at 0.05 ppm, wheat, hay at 1.2 ppm, wheat, straw at 0.20 ppm, and wheat, bran at 0.20 ppm.

Additionally, expired time-limited tolerances for rice, grain; rice, straw;

rice, bran; and rice, hulls are removed from 40 CFR part 180.484:

#### VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable

duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

#### VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 29, 2008.

**Lois A. Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

#### PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.484 is amended by removing paragraph (a)(2), removing the heading to paragraph (a)(1), redesignating paragraph (a)(1) as paragraph (a) and revising paragraph (d) to read as follows:

**§ 180.484 Flutolanil (N-(3-(1-methylethoxy)phenyl)-2-(trifluoromethyl)benzamide); tolerances for residues.**

\* \* \* \* \*

(d) *Indirect or inadvertent residues.* Tolerances are established for the indirect or inadvertent residues of the fungicide flutolanil, N-(3-(1-methylethoxy)phenyl)-2-(trifluoromethyl)benzamide, and its metabolites converted to 2-(trifluoromethyl) benzoic acid and

calculated as flutolanil, in or on the following commodities:

Commodity	Parts per million
Soybean, forage .....	8.0
Soybean, hay .....	2.5
Soybean, seed .....	0.20
Wheat, bran .....	0.20
Wheat, forage .....	2.5
Wheat, grain .....	0.05
Wheat, hay .....	1.2
Wheat, straw .....	0.20

[FR Doc. E8-13000 Filed 6-10-08; 8:45 am]

BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2007-0535; FRL-8366-4]

#### Bifenthrin; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of the insecticide bifenthrin (2-methyl [1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate in or on food commodities bushberry subgroup 13-07B; and leafy petioles subgroup 4B. The Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). In addition, this action revises previously established time-limited tolerances for residues of bifenthrin in or on orchardgrass, forage and orchardgrass, hay in response to the approval of a specific exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing the use of this insecticide on orchardgrass in the State of Oregon to control western orchardgrass billbug. Residue data have been submitted indicating the need to increase the tolerances from their original level. This regulation establishes maximum permissible levels of residues of bifenthrin in these food/feed commodities. The time-limited tolerances expire and are revoked on December 31, 2009.

**DATES:** This regulation is effective June 11, 2008. Objections and requests for hearings must be received on or before August 11, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-0535. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Sidney Jackson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7610; e-mail address: [jackson.sidney@epa.gov](mailto:jackson.sidney@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are

not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at <http://www.gpoaccess.gov/ecfr>.

###### C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-

OPP-2007-0535. in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before August 11, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA-HQ-OPP-2007-0535, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

## II. Petition for Tolerance

In the **Federal Register** of August 1, 2007 (72 FR 42074) (FRL-8140-4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E7227) by IR-4, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.442 be amended by establishing tolerances for residues of the insecticide bifenthrin (2-methyl [1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate in or on food commodities bushberry subgroup 13-B and junberry; lingonberry; salal; aronia berry; blueberry, lowbush; buffalo currant; Chilean guava; European barberry; highbush cranberry; honeysuckle; jostaberry; native currant; sea buckthorn at 2.0 ppm; and leafy petioles subgroup 4-B at 3.0 ppm. That notice referenced a summary of the petition prepared by FMC Corporation, the registrant, which is available to the public in the docket,

<http://www.regulations.gov>. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has corrected the commodity definition and utilized established new crop groups/subgroups outlined in the final rule for Pesticide Tolerance Crop Grouping Program dated December 7, 2007 (72 FR 69150) (FRL-8343-1). The new commodity definition, Bushberry subgroup 13-07B, includes all proposed commodities as well as additional related commodities. Therefore, a separate tolerance for each commodity is not needed. Based on supporting data, EPA also revised the proposed tolerance level from 2.0 to 1.8 ppm. The reasons for these changes are explained in Unit IV.C.

EPA is also revising previously established time-limited tolerances for residues of the insecticide bifenthrin in or on orchardgrass, forage at 2.5 ppm and orchardgrass, hay at 4.5 ppm. These tolerances expire and are revoked on December 31, 2009. The Agency is establishing these time-limited tolerances in response to a specific emergency exemption request under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. 136p, on behalf of the Oregon Department of Agriculture for the emergency use of bifenthrin on orchardgrass grown for seed, to control the orchardgrass billbug.

Oregon produces nearly all of the nation's orchardgrass seed, which is primarily used as a high protein pasture grass. The key pest of orchardgrass in Oregon is the orchardgrass billbug, which lays eggs into the stem where they hatch and are hard to control by insecticides. The effect of drought conditions in fields serves to magnify damage and loss associated with this pest. Significant yield losses, and subsequently economic losses, are expected without adequate control. EPA has authorized under FIFRA section 18 the use of bifenthrin on orchardgrass for control of orchardgrass billbug in Oregon. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of the emergency exemption request, EPA assessed the potential risks presented by the residues of bifenthrin in or on orchardgrass, forage and orchardgrass, hay. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary time-limited tolerances under section 408(1)(6) of the FFDCA would be consistent with the safety standard

and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address the urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is revising these time-limited tolerances without notice and opportunity for public comment as provided in section 408 (1) (6) of the FFDCA. Although, these time-limited tolerances expire and are revoked on December 31, 2009, under section 408 (1) (5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on orchardgrass, forage and hay after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed levels that were authorized by these time-limited tolerances at the time of application. EPA will take action to revoke these time-limited tolerances earlier if any experience with, scientific data, or other relevant information on this pesticide indicates that the residues are not safe.

Because these time-limited tolerances are being approved under emergency conditions, EPA has not made any decisions about whether bifenthrin meets EPA's registration requirements for use on orchardgrass, forage and hay, or whether a permanent tolerance for these uses would be appropriate. Under this circumstance, EPA does not believe that the time-limited tolerance serves as a basis for registration of bifenthrin by a State for special local needs under FIFRA section 24(c). Nor does the time-limited tolerance serve as the basis for any State other than Oregon to use this pesticide on these commodities under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide

chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....” These provisions were added to the FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of insecticide bifenthrin (2-methyl [1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate in or on food commodities bushberry subgroup 13-07B at 1.8 ppm; leafy petioles subgroup 4-B at 3.0 ppm as well as the time-limited tolerance for residues of bifenthrin in or on orchardgrass, forage at 2.5 ppm and orchardgrass, hay at 4.5 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

#### A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by bifenthrin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <http://www.regulations.gov> in document entitled “Human Health Risk Assessment” in docket ID number EPA-HQ-OPP-2007-0535-0004.

#### B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified

(the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <http://www.epa.gov/pesticides/factsheets/riskassess.htm>.

A summary of the toxicological endpoints for bifenthrin used for human risk assessment can be found at <http://www.regulations.gov> in the Bifenthrin Human Health Risk Assessment in docket ID number EPA-HQ-OPP-2007-0535-0004.

#### C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to bifenthrin, EPA considered exposure under the petitioned-for tolerances as well as all existing bifenthrin tolerances in (40 CFR 180.442). EPA assessed dietary exposures from bifenthrin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by

Individuals (CSFII). As to residue levels in food, EPA conducted a highly-refined, acute probabilistic dietary exposure and risk assessment for all registered and pending food uses. Anticipated residues (ARs) were developed based on the latest USDA's Pesticide Data Program (PDP) monitoring data 1998–2005, Food and Drug Administration (FDA) data, or field trial data for bifenthrin. ARs were further refined using the latest percent crop-treated (PCT) data and processing factors where appropriate. For new uses and uses that have been registered less than five years 100 PCT was assumed.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, a refined chronic dietary exposure assessment was conducted for all the registered and pending food uses of bifenthrin using single point estimates of anticipated bifenthrin residues, including PCT for registered food/feed commodities. For new uses and uses that have been registered less than 5 years, 100 PCT was assumed.

iii. *Cancer.* There was no conclusive evidence of carcinogenic potential of bifenthrin in the rat. A mouse oncogenicity study provided some evidence for carcinogenic potential in this species. In the mouse oncogenicity study, high-dose (81.3 mg/kg/day) males showed a highly significant increased incidence of urinary bladder tumors. Other findings in the mouse study included a dose-related trend of increased combined incidences of adenoma and adenocarcinoma of the liver (males only), and increased incidences of bronchioalveolar adenomas and adenocarcinomas of the lung in females at some, but not all dose levels relative to their controls. The EPA has characterized bifenthrin as Category C (possible human carcinogen) primarily on the basis of a mouse study. For the purpose of risk characterization, the reference-dose (RfD) approach should be used for quantification of human cancer risk.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) of the FFDCA require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the

present action, EPA will issue such data call-ins as are required by section 408(b)(2)(E) of the FFDCA and authorized under section 408(f)(1) of the FFDCA. Data will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

a. The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.

b. The exposure estimate does not underestimate exposure for any significant subpopulation group.

c. Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such areas.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information for chronic dietary exposure as follows:

Raspberries 70%; honeydew melon 55%; hops 35%; alfalfa 1%; blackberries 20%; cantaloupes 20%; sweet corn 20%; cabbage 15%; artichokes 10%; broccoli 1%; cauliflower 5%; corn 1%; cucumbers 5%; grapes 1%; canola/rapeseed 5%; lettuce 1%; peas, green 5%; carrots 5%; peppers 5%; pumpkins 15%; dry beans/peas 1%; tomatoes 5%; watermelons 5%; onions 1%; peanuts 1%; pecans 1%; potatoes 1%; soybean 1%; squash 5%; sweet potatoes 35%; beans, green 30%; strawberries 15%; cotton 1%; and lettuce 1%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported

within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the conditions listed in Unit III.C.1.iv.a., b., and c. have been met. With respect to Condition a., PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b. and c., regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which bifenthrin may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for bifenthrin in drinking water. Because the Agency does not have comprehensive monitoring data for drinking water concentrations, the Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for bifenthrin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of bifenthrin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of bifenthrin for acute and chronic exposure were calculated based on a maximum application rate of 0.5 pound(lb) active ingredient(ai)/acre(A)/season. For both acute and chronic exposures, the EDWC in surface water was estimated as 0.0140 ppb. The

EDWC for both acute and chronic exposures is estimated to be 0.0030 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute and chronic dietary risk assessments, the water concentration value of 0.0140 ppb (based on the maximum applied rate to lettuce at 0.5 lb a.i./A/season) was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Bifenthrin is currently registered for the following residential non-dietary sites: Indoor and outdoor residential non-dietary sites. Adults are potentially exposed to bifenthrin residues during residential application of bifenthrin. Both adults and children are potentially exposed to bifenthrin residues after application (post-application) of bifenthrin products in residential settings. Exposure estimates were generated for residential handlers and individuals potential post-application contact with lawn, soil, and treated indoor surfaces using the EPA's Draft Standard Operating Procedures (SOPs) for Residential Exposure Assessment, and dissipation data from a turf transferable residue (TTR) study. Short-term and intermediate-term dermal and inhalation exposures for adults, and short-term and intermediate-term dermal and incidental oral exposures for children are anticipated. These estimates are considered conservative, but appropriate, since the study data were generated at maximum application rates.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Bifenthrin is a member of the pyrethroid class of pesticides. EPA is not currently following a cumulative risk approach based on a common mechanism of toxicity for the pyrethroids. Although all pyrethroids alter nerve function by modifying the normal biochemistry and physiology of nerve membrane sodium channels, available data show that there are multiple types of sodium channels and

it is currently unknown whether the pyrethroids as a class have similar effects on all channels or whether modifications of different types of sodium channels would have a cumulative effect. Nor do we have a clear understanding of effects on key downstream neuronal function, e.g., nerve excitability, or how these key events interact to produce their compound specific patterns of neurotoxicity. Without such understanding, there is no basis to make a common mechanism of toxicity finding. There is ongoing research by the EPA's Office of Research and Development and pyrethroid registrants to evaluate the differential biochemical and physiological actions of pyrethroids in mammals. When available, the Agency will evaluate results of this research and make a determination of common mechanism as a basis for assessing cumulative risk. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism on EPA's website at <http://www.epa.gov/pesticides/cumulative/>.

#### *D. Safety Factor for Infants and Children*

1. *In general.* Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* EPA concluded there is not a concern for prenatal and/or postnatal toxicity resulting from exposure to bifenthrin. There was no quantitative or qualitative evidence of increased susceptibility of rat or rabbit fetuses to in utero exposure to bifenthrin in developmental toxicity studies and no quantitative or qualitative evidence of increased susceptibility of neonates (as compared to adults) to bifenthrin in a 2-generation reproduction study in rats. Additionally, there was no quantitative or qualitative evidence of increased susceptibility of neonates (as compared to adults) to bifenthrin in a developmental neurotoxicity study. There are no concerns or residual

uncertainties for prenatal and/or postnatal toxicity following exposure to bifenthrin.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

- i. The toxicity database for bifenthrin is complete.
- ii. A DNT study with bifenthrin is available. This study does not show any evidence of increased susceptibility of offspring following exposure to bifenthrin. This study did not impact endpoints selected by the Agency for various exposure scenarios.
- iii. There is no evidence that bifenthrin results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.
- iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on anticipated residues and percent crop treated. These assumptions are based on reliable data and will not underestimate the exposure and risk. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to bifenthrin in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by bifenthrin.

#### *E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to bifenthrin will occupy 25% of the aPAD

for all infants (<1 year old) the population group receiving the greatest exposure. Therefore, EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to bifenthrin from food and water will utilize 55% of the cPAD for children 3–5 years old the population group receiving the greatest exposure. Based on the use pattern, chronic residential exposure to residues of bifenthrin is not expected. Therefore, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short- and Intermediate-term risks.* Short-term and intermediate-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Bifenthrin is currently registered for uses that could result in short-term and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water and short-term and intermediate-term exposures to bifenthrin.

Using the exposure assumptions described in this unit for short-term and intermediate-term exposures, EPA has concluded food, water, and residential exposures aggregated result in aggregate MOEs of 220 for the U.S. general population, 270 for all infants < 1 year old, and 180 for children 3–5 years old, the subpopulation at greatest exposure. These aggregate MOEs do not exceed the Agency's LOC for aggregate exposure to food, water and residential uses.

Therefore, EPA does not expect short and intermediate-term aggregate exposures to exceed the Agency's LOC.

4. *Aggregate cancer risk for U.S. population.* The Agency considers the chronic aggregate risk assessment, making use of the cPAD, to be protective of any aggregate cancer risk. See Unit III.C.iii.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to bifenthrin residues.

## **IV. Other Considerations**

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology (gas chromatography (GC)/electron-capture detection (ECD)) are available to enforce the tolerance expression. The limit of quantitation (LOQ) for these



methods is 0.05 ppm. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

#### B. International Residue Limits

There are no Codex, Canadian, or Mexican MRLs for bifenthrin in or on the proposed commodities.

#### C. Revisions to Petitioned-For Tolerances

Based on evaluation of available data supporting this petition, the Agency revised the registrant's proposed tolerances for Bushberry, subgroup 13B, including proposed individual berries tolerance, from 2.0 to 1.8 ppm and applied the corrected commodity definition, Bushberry subgroup 13-07B. Separate tolerances for new commodities listed in crop subgroup 13-07B are not required as outlined in the Pesticide Tolerance Crop Grouping Program Final Rule published in the **Federal Register** of December 7, 2007 (72 FR 69150) (FRL-8340-6).

The Agency determined that adequate data are available to support establishing a tolerance for the bushberry subgroup 13-07B. IR-4 petitioned for a tolerance for bushberry subgroup 13B as well as an individual tolerance on juneberry; lingonberry; salal; aronia berry; blueberry, lowbush; buffalo currant; Chilean guava; European barberry; highbush cranberry; honeysuckle; jostaberry; native currant; sea buckthorn (PP 7E7227). EPA has expanded and revised berries group 13. Changes to crop group 13 (berries) included adding new commodities, revising existing subgroups and creating new subgroups (including a bushberry subgroup 13-07B consisting of the commodities requested in PP 7E7227 and cultivars, varieties, and/or hybrids of these).

EPA indicated in the December 7, 2007 final rule as well as the earlier May 23, 2007 proposed rule (72 FR 28920) that, for existing petitions for which a Notice of Filing had been published, the Agency would attempt to conform these petitions to the rule. Therefore, consistent with this rule, EPA is establishing tolerances on Bushberry subgroup 13-07B. Bushberry subgroup 13-07B consists of the berries for which tolerances were requested in PP 7E7227, as well as, additional commodities not included in the original tolerance petition.

EPA concludes it is reasonable to revise the petitioned-for tolerances so

that they agree with the recent crop grouping revisions because:

i. Although the subgroup includes several new commodities, these commodities were proposed as individual tolerances and are closely related minor crops which contribute little to overall dietary or aggregate exposure and risk;

ii. Bifenthrin exposure from these added commodities was considered when EPA conducted the dietary and aggregate risk assessments supporting this action; and

iii. the representative commodities for the revised subgroup have not changed.

**Bushberry subgroup 13-07B.** The field trials with bifenthrin on blueberries, representative crop, are adequate. An adequate number of trials were conducted reflecting the proposed use patterns in the appropriate geographic regions, and the appropriate commodities were collected at the proposed "pre" harvest intervals (PHIs). Samples were analyzed using adequate and appropriate analytical methods. Tolerance levels for residues in or on bushberry (subgroup 13-07B) were determined using the North American Free Trade Agreement (NAFTA) maximum residue levels (MRL)/Tolerance Harmonization Spreadsheet.

#### V. Conclusion

Therefore, tolerances are established for residues of the insecticide bifenthrin (2-methyl [1, 1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate in or on food commodities bushberry subgroup 13-07B at 1.8 ppm; and leafy petioles subgroup 4B at 3.0 ppm. In addition, this regulation revises the time-limited tolerances for residues of bifenthrin in or on orchardgrass, forage at 2.5 ppm and orchardgrass, hay at 4.5 ppm.

#### VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety*

*Risks* (62 FR 19885, April 23, 1997).

This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

#### VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S.



Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 28, 2008.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

#### PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.442 is amended by alphabetically adding the following commodities to the table in paragraph (a) and by revising paragraph (b) to read as follows:

#### §180.442 Bifenthrin; tolerances for residues.

(a) *General.* (1) \* \* \*

Commodity	Parts per million
* * *	* *
Bushberry subgroup 13-07B .....	1.8

Commodity	Parts per million
* * *	* *
Leafy petioles subgroup 4B .....	3.0
* * *	* *

\* \* \* \* \*

(b) *Section 18 emergency exemptions.* A time-limited tolerance is established for the residues of the insecticide bifenthrin ((2-methyl [1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate) in connection with use of the pesticide under a section 18 emergency exemption granted by EPA. This tolerance will expire and is revoked on the date specified in the following table.

Commodity	Parts per million	Expiration/Revocation Date
Orchardgrass, forage .....	2.5	12/31/09
Orchardgrass, hay .....	4.5	12/31/09

\* \* \* \* \*

[FR Doc. E8-13068 Filed 6-10-08; 8:45 am]

BILLING CODE 6560-50-S

# Proposed Rules

Federal Register

Vol. 73, No. 113

Wednesday, June 11, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2008-0230; Directorate Identifier 2007-NE-24-AD]

RIN 2120-AA64

#### Airworthiness Directives; Rolls-Royce Corporation AE 3007A1E and AE 1107C Turboprop/Turboshaft Engines

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for Rolls-Royce Corporation (RRC) AE 3007A1E and AE 1107C turboprop/turboshaft engines. This proposed AD would require removal from service of certain 2nd stage, 3rd stage, and 4th stage compressor wheels, compressor cone shaft assemblies, and 1st to 2nd-stage turbine spacers, at new, reduced, published life limits. This proposed AD results from RRC applying an updated lifeing methodology to the affected parts. We are proposing this AD to prevent low-cycle-fatigue (LCF) failure of the parts listed in Table 1 of this proposed AD, which could result in an uncontained engine failure and damage to the aircraft.

**DATES:** We must receive any comments on this proposed AD by August 11, 2008.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* (202) 493-2251.

You can get the service information identified in this proposed AD from Rolls-Royce Corporation, P.O. Box 420, Indianapolis, IN 46206; e-mail: [indy.pubs.services@rolls-royce.com](mailto:indy.pubs.services@rolls-royce.com); telephone (317) 230-3774; fax (317) 230-8084.

#### FOR FURTHER INFORMATION CONTACT:

Michael Downs, Aerospace Engineer, Chicago Aircraft Certification Office, Small Airplane Directorate, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; telephone (847) 294-7870; fax (847) 294-7834.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2008-0230; Directorate Identifier 2007-NE-24-AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday,

except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

#### Discussion

RRC was seeking to increase the LCF lives of the compressor wheels used in AE 3007A1E and AE 1107C turboprop/turboshaft engines, by applying an updated lifeing methodology. However, their engine testing and evaluation revealed that some of the compressor wheels experienced crack initiation in the dovetail slots. RRC found that these parts were likely to fail within their published lives, and that that failure presented an unacceptable compromise to safety. As a result, RRC decreased the published life limits of the compressor wheels, and also recalculated and decreased the published life of certain compressor cone shaft assemblies and 1st-to-2nd stage turbine spacers. We reviewed RRC's testing results and reached the same conclusion. These conditions, if not corrected, could lead to LCF failure of the parts listed in Table 1 of this proposed AD, which could result in an uncontained engine failure and damage to the aircraft.

#### FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require removal from service of the parts listed in Table 1 of this proposed AD, at new, reduced, published life limits.

#### Costs of Compliance

We estimate that this proposed AD would affect 220 AE 3007A1E turboprop engines installed on aircraft of U.S. registry. The proposed action does not impose any additional labor costs since it will be performed at engine overhaul. Required parts would cost about \$100,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be \$22,000,000.

### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the

States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. You may get a copy of this summary at the address listed under **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

**Rolls-Royce Corporation (Formerly Allison Engine Company, Inc.):** Docket No. FAA-2008-0230; Directorate Identifier 2007-NE-24-AD.

#### Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by August 11, 2008.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Rolls-Royce Corporation (RRC) AE 3007A1E and AE 1107C turboprop/turboshaft engines, with the following parts in Table 1 installed, as applicable:

TABLE 1.—AFFECTED PARTS AND REDUCED LIFE LIMITS

Engine	Part name	Part No.	New reduced published life limit, in flight cycles
AE 3007A1E .....	2nd Stage Compressor Wheel .....	23050752	15,200
	3rd Stage Compressor Wheel .....	23065303	13,300
AE 1107C .....	2nd Stage Compressor Wheel .....	23050752	11,400
	2nd Stage Compressor Wheel .....	23084157	11,400
	3rd Stage Compressor Wheel .....	23065303	6,200
	3rd Stage Compressor Wheel (serial numbers L72422, L72475, L72505, L130704, L130829, L130830, L138218, L138226, L138621, L206084, L206163) .....	23065303	5,000
	3rd Stage Compressor Wheel .....	23084158	6,200
	4th Stage Compressor Wheel .....	23050754	14,900
	4th Stage Compressor Wheel .....	23071259	14,900
	4th Stage Compressor Wheel .....	23084159	14,900
	Compressor Cone Shaft Assembly .....	23050728	2,900
	Compressor Cone Shaft Assembly .....	23070729	2,900
	1st to 2nd-Stage Turbine Spacer .....	23065300	9,500

AE 3007A1E turboprop engines are installed on, but not limited to, EMBRAER EMB-135BJ and EMB-145XR airplanes. AE 1107C turboshaft engines are U.S. type-certificated and are installed on, but not limited to, certain U.S. military aircraft.

### Unsafe Condition

(d) This AD results from RRC applying an updated lifing methodology to the affected parts. We are issuing this AD to prevent low-cycle-fatigue failure of the parts listed in Table 1 of this AD, which could result in an uncontained engine failure and damage to the aircraft.

### Compliance

(e) You are responsible for having the actions required by this AD performed within 5 days after the effective date of this AD, unless the actions have already been done.

(f) Remove from service the parts listed in Table 1 of this AD, at the new, reduced, published life limits specified in Table 1 of this AD.

### Alternative Methods of Compliance

(g) The Manager, Chicago Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

### Related Information

(h) RRC Alert Service Bulletin (ASB) No. AE 3007A-A-72-346, dated May 1, 2007; Service Bulletin No. AE 1107C-A-72-086, Revision 2, dated January 28, 2008; and ASB No. AE 1107C-A-72-089, dated January 28, 2008, also pertain to the subject of this AD.

(i) Contact Michael Downs, Aerospace Engineer, Chicago Aircraft Certification Office, Small Airplane Directorate, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; telephone (847) 294-7870; fax (847) 294-7834, for more information about this AD.

Issued in Burlington, Massachusetts, on June 5, 2008.

**Robert G. Mann,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. E8-13056 Filed 6-10-08; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 15

[Docket Nos. FDA-2005-P-0196 and FDA-2007-0545] (formerly Docket No. 2005P-0450)

#### **Salt and Sodium; Petition to Revise the Regulatory Status of Salt and Establish Food Labeling Requirements Regarding Salt and Sodium; Public Hearing; Reopening of the Comment Period**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public hearing; reopening of the comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is reopening until August 11, 2008, the comment period for the notice of public hearing, published in the **Federal Register** of October 23, 2007 (72 FR 59973), requesting comments regarding FDA's current framework of policies regarding salt and sodium and potential future approaches, including approaches described in a citizen petition. The agency is taking this action in response to a request for an extension to allow interested persons additional time to submit comments. FDA is also reopening the comment period to update comments and to receive any new information.

**DATES:** Submit written or electronic comments by August 11, 2008. The administrative record of the hearing will remain open until August 11, 2008.

**ADDRESSES:** You may submit comments, identified by Docket Nos. FDA-2005-P-0196 and FDA-2007-0545 (formerly Docket No. 2005P-0450), by any of the following methods:

##### *Electronic Submissions*

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

##### *Written Submissions*

Submit written submissions in the following ways:

- FAX: 301-827-6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

*Instructions:* All submissions received must include the agency name and Docket No(s) for this rulemaking. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and insert the docket number(s), found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Juanita Yates, Center for Food Safety and Applied Nutrition (HFS-555), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-1731, FAX: 301-436-2964.

##### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

In the **Federal Register** of October 23, 2007 (72 FR 59973), FDA published a notice of public hearing requesting comments on FDA's current regulatory framework of policies regarding salt and sodium and future approaches, including approaches described in a citizen petition submitted by the Center for Science in the Public Interest. Specifically, FDA sought comments on the issues and questions presented in section III of the notice. (See 72 FR 59973 at 59976.)

Interested persons were originally given until March 28, 2008, to comment on issues related to salt and sodium.

#### **II. Request for Comments**

Following publication of the October 30, 2007, notice of public hearing, FDA received a request for a 60-day extension of the comment period. The request conveyed concern that the FDA Division of Dockets Management Web site transition to the Federal Docket Management System (FDMS) on January 15, 2008, delayed the public presentation of relevant material in the docket and thus did not allow sufficient time to develop a meaningful or thoughtful response to the request for comments on the issues and questions presented in section III of the notice.

FDA has considered the request and is reopening the comment period for the notice of public hearing, for 60 days, until August 11, 2008. The agency believes that reopening the comment period for 60 days allows adequate time for interested persons to submit comments on the issues and questions presented in section III of the notice without significantly delaying the agency's consideration of issues related to salt and sodium.

#### **III. How to Submit Comments**

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to <http://www.regulations.gov> or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at <http://www.regulations.gov>.

Dated: June 3, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E8-13122 Filed 6-10-08; 8:45 am]

BILLING CODE 4160-01-S

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165****[Docket No. USCG–2008–0246]****RIN 1625–AA00****Safety zone; BWRC Annual Thanksgiving Regatta; Lake Moolvalya, Parker, AZ****AGENCY:** Coast Guard, DHS.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes a safety zone, on the navigable waters of Lake Moolvalya region on the lower Colorado River in support of the Bluewater Resort and Casino Annual Thanksgiving Regatta. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

**DATES:** Comments and related material must reach the Coast Guard on or before July 11, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2008–0246 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–2733. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:****Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

**Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0246), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time. Enter the docket number for this rulemaking (USCG–2008–0246) in the Search box, and click "Go >>." You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the U.S. Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**Privacy Act**

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

Southern California Speedboat Club is sponsoring the Bluewater Resort and Casino Annual Thanksgiving Regatta. The event is a circle boat race consisting of 85 powerboats ranging from 12 to 22 feet in length. The sponsor will provide two water rescue boats and two patrol boats for this event. This safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway.

**Discussion of Proposed Rule**

The Coast Guard proposes a safety zone that would be enforced from 6 a.m. on November 28, 2008 to 6 p.m. on November 30, 2008. The limits of the safety zone would be as follows: The Headgate Dam at 34°10.19 N, 114°16.26 W following the river east to 34°10.30 N, 114°15.72 W.

This safety zone is necessary to provide for the safety of the crews, spectators, and participants of the event and to protect other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

**Regulatory Evaluation**

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the region of Lake Moolvalya on the lower Colorado River from 6 a.m. on November 28, 2008 to 6 p.m. on November 30, 2008.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for twelve hours for a period of 3 days. Although the safety zone would apply to the entire width of the river, traffic would be allowed to pass through the zone with the permission of the Coast Guard patrol commander. Before the effective period, we will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VFH before the safety zone is enforced.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in

understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7233. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### **Collection of Information**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

#### **Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### **Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### **Taking of Private Property**

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### **Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### **Protection of Children**

We have analyzed this proposed rule under Executive Order 13045,

Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### **Indian Tribal Governments**

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### **Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### **Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### **Environment**

We have analyzed this proposed rule under Commandant Instruction M16475.ID which guides the Coast Guard in complying with the National

Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A preliminary “Environmental Analysis Check List” supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

#### Words of Issuance and Proposed Regulatory Text

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add a new temporary safety zone § 165.T11–034.

#### § 165.T11–034 Safety zone; BWRC Annual Thanksgiving Regatta; Lake Moolvalya, Parker, AZ.

(a) *Location.* The limits of the proposed safety zone are as follows: The Headgate Dam at 34°10.19 N, 114°16.26 W following the river east to 34°10.30 N, 114°15.72 W.

(b) *Enforcement Period.* This section will be enforced from 6 a.m. to 6 p.m. on November 28, 2008 through November 30, 2008. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative*, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by

the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: May 22, 2008.

C.V. Strangfeld,

*Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.*

[FR Doc. E8–13142 Filed 6–10–08; 8:45 am]

BILLING CODE 4910–15–P

### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2008–0320]

RIN 1625–AA00

#### Safety Zone; IJSBA World Finals; Colorado River, Lake Havasu City, AZ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes a safety zone, on the navigable waters of Lake Havasu on the lower Colorado River in support of the IJSBA World Finals. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

**DATES:** Comments and related material must reach the Coast Guard on or before July 11, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2008–0320 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–2733. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### SUPPLEMENTARY INFORMATION:

#### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT’s “Privacy Act” paragraph below.

#### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0320), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider

all comments and material received during the comment period. We may change this proposed rule in view of them.

### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time. Enter the docket number for this rulemaking (USCG–2008–0320) in the Search box, and click “Go >>.” You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the U.S. Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

### Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation’s Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

The International Jet Sports Boating Association is sponsoring the IJSBA World Finals. The event is a circle race consisting of 300–500 personal water craft up to 12 feet in length. The sponsor will provide four to five course marshal and safety rescue vessels and four to five perimeter patrol and safety boats for this event. This safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway.

### Discussion of Proposed Rule

The Coast Guard proposes a safety zone that would be enforced from 6 a.m. on October 4, 2008 to 6 p.m. on October

12, 2008. The limits of the safety zone would be as follows: the London Bridge channel at 34°28.49 N, 114°21.33 W, then northwest to 34°28.52 N, 114°21.46 W, then southwest to 34°28.44 N, 114°21.73 W, then south to 34°28.30 N, 114°21.69 W, and finally following the shoreline east and north to 34°28.49 N, 114°21.33 W.

This safety zone is necessary to provide for the safety of the crews, spectators, and participants of the event and to protect other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

### Regulatory Evaluation

This proposed rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the region of Lake Havasu on the lower Colorado River from 6 a.m. on October 4, 2008 to 6 p.m. on October 12, 2008.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for twelve hours for a period of 9 days. Vessel traffic could pass safely around the safety zone. Before the effective period, we will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the safety zone is enforced.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7233. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the



aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A preliminary "Environmental Analysis Check List" supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

### Words of Issuance and Proposed Regulatory Text

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add a new temporary safety zone § 165.T11–035.

### § 165.T11–035 Safety zone; IJSBA World Finals; Colorado River, Lake Havasu City, AZ.

(a) *Location.* The limits of the proposed safety zone are as follows: The London Bridge channel at 34°28.49 N, 114°21.33 W, then northwest to 34°28.52 N, 114°21.46 W, then southwest to 34°28.44 N, 114°21.73 W, then south to 34°28.30 N, 114°21.69 W, and finally following the shoreline east and north to 34°28.49 N, 114°21.33 W.

(b) *Enforcement Period.* This section will be enforced from 6 a.m. to 6 p.m. on October 4, 2008 through October 12, 2008. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *Designated representative* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: May 22, 2008.

**C.V. Strangfeld,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector San Diego.*

[FR Doc. E8–13123 Filed 6–10–08; 8:45 am]

**BILLING CODE 4910–15–P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165****[Docket No. USCG-2008-0245]****RIN 1625-AA00****Safety Zone; BWRC '300' Enduro; Lake Moolvalya, Parker, AZ****AGENCY:** Coast Guard, DHS.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes a safety zone, on the navigable waters of Lake Moolvalya region on the lower Colorado River in support of the Bluewater Resort and Casino '300' Enduro. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

**DATES:** Comments and related material must reach the Coast Guard on or before July 11, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG-2008-0245 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(3) *Hand delivery:* Room W12-140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(4) *Fax:* 202-493-2251.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278-2733. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:****Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

**Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG-2008-0245), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time. Enter the docket number for this rulemaking (USCG-2008-0245) in the Search box, and click "Go >>." You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the U.S. Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**Privacy Act**

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

**Public meeting**

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

RPM Racing Enterprises is sponsoring the Bluewater Resort and Casino '300' Enduro. The event is a closed boat endurance race consisting of 30 to 50 powerboats ranging from 16 to 26 feet in length. The sponsor will provide four water rescue boats and eight patrol boats for this event. This safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway.

**Discussion of Proposed Rule**

The Coast Guard proposes a safety zone that would be enforced from 6 a.m. on October 24, 2008 to 6 p.m. on October 26, 2008. The limits of the safety zone would be as follows: The Headgate Dam at 34°11.20 N, 114°13.74 W following the river northeast to 34°10.10 N, 114°16.61 W.

This safety zone is necessary to provide for the safety of the crews, spectators, and participants of the event and to protect other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

**Regulatory Evaluation**

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the region of Lake Moolvalya on the lower Colorado River from 6 a.m. on October 24, 2008 to 6 p.m. on October 26, 2008.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for twelve hours for a period of 3 days. Although the safety zone would apply to the entire width of the river, traffic would be allowed to pass through the zone with the permission of the Coast Guard patrol commander. Before the effective period, we will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VFH before the safety zone is enforced.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in

understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7233. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### **Collection of Information**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### **Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### **Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### **Taking of Private Property**

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### **Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### **Protection of Children**

We have analyzed this proposed rule under Executive Order 13045,

Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### **Indian Tribal Governments**

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### **Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### **Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### **Environment**

We have analyzed this proposed rule under Commandant Instruction M16475.ID which guides the Coast Guard in complying with the National

Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A preliminary “Environmental Analysis Check List” supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

#### Words of Issuance and Proposed Regulatory Text

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 122, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add a new temporary safety zone § 165.T11–033.

#### § 165.T11–033 Safety zone; BWRC ‘300’ Enduro; Lake Moolvalya, Parker, AZ.

(a) *Location.* The limits of the proposed safety zone are as follows: The Headgate Dam at 34°11.20 N, 114°13.74 W following the river northeast to 34°10.10 N, 114°16.61 W.

(b) *Enforcement Period.* This section will be enforced from 6 a.m. to 6 p.m. on October 24, 2008 through October 26, 2008. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *Designated representative* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: May 22, 2008.

**C.V. Strangfeld,**

*Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.*

[FR Doc. E8–13146 Filed 6–10–08; 8:45 am]

**BILLING CODE 4910–15–P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 152, 156 and 165

[EPA–HQ–OPP–2005–0327; FRL–8358–1]

**RIN A2070–AJ37**

#### Pesticide Management and Disposal; Standards for Pesticide Containers and Containment: Proposed Amendments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to amend the container and containment regulations to provide a 1-year extension of the labeling compliance date from August 17, 2009 to August 17, 2010; to change the phrase “sold or distributed” to “released for shipment” as associated with all of the compliance dates; to provide for exceptions to the language requirements for some specific nonrefillable packages; to allow for waivers of certain label requirements for other refillable and nonrefillable containers on a case-by-case basis; and to correct typographical and other minor errors. In addition, the Agency is proposing to amend the definitions in 40 CFR part 152 to establish a definition of “released for shipment.” These changes are being proposed to address concerns raised by stakeholders and as a result of further Agency consideration.

**DATES:** Comments must be received on or before July 11, 2008.

**ADDRESSES:** Submit your comments, identified by docket identification (ID)

number EPA–HQ–OPP–2005–0327, by one of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

• *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket’s normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

*Instructions:* Direct your comments to docket ID number EPA–HQ–OPP–2005–0327. EPA’s policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index available in [www.regulations.gov](http://www.regulations.gov). Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other

material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

#### FOR FURTHER INFORMATION CONTACT:

Nancy Fitz, Field and External Affairs Division (FEAD) (7506P), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7385; fax number: (703) 308-2962; e-mail address: [fitz.nancy@epa.gov](mailto:fitz.nancy@epa.gov), or Kimberly Nesci, FEAD (7506P), OPP, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703-308-8059; fax number: (703) 308-2962; e-mail address: [neski.kimberly@epa.gov](mailto:neski.kimberly@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide formulator, agrichemical dealer, an independent commercial applicator, or a custom blender. Potentially affected entities may include, but are not limited to:

- Pesticide formulators (NAICS code 32532), e.g., establishments that formulate and prepare insecticides, fungicides, herbicides or other pesticides from technical chemicals or concentrates produced by pesticide manufacturing establishments.
- Agrichemical dealers (NAICS code 44422), e.g., retail dealers that distribute or sell pesticides to agricultural users.
- Independent commercial applicators (NAICS code 115112), e.g., businesses that apply pesticides for compensation (by aerial and/or ground application) and that are not affiliated with agrichemical dealers.
- Custom blenders (NAICS code 44422), most custom blenders are also dealers.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American

Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Units II.D., III., V.B., VI.C., VII.B., VIII.C., and IX.A. of the preamble to the final pesticide container and containment rule, 71 FR 47330 (August 16, 2006). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Background

### A. What Action is the Agency Taking?

On August 16, 2006, EPA promulgated a final rule titled "Pesticide Management and Disposal; Standards for Pesticide Containers and Containment" (71 FR 47330) (Container and Containment Rule; establishing 40 CFR part 165, and amending 40 CFR part 156). The Container and Containment Rule established regulations for the safe storage and disposal of pesticides, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), to reduce the likelihood of unreasonable adverse effects on human health and the environment. The container and containment regulations include requirements for pesticide container design; procedures, standards, and label language to facilitate removal of pesticides from containers prior to their being used, recycled, or discarded; and requirements for containment of stationary pesticide containers and procedures for container refilling operations. The rule required that all pesticide products distributed or sold by a registrant as of August 17, 2009, bear labels that comply with the rule's label language requirements (40 CFR 156.159).

EPA is proposing to amend the container and containment regulations to provide a 1-year extension of the labeling compliance date (from August 17, 2009 to August 17, 2010); to change the phrase "sold or distributed" to "released for shipment" as associated with all of the compliance dates; to provide for exceptions to the language requirements for some specific nonrefillable packages; to allow for waivers of certain label requirements for other refillable and nonrefillable containers on a case-by-case basis; and to correct typographical and other minor errors. In addition, the Agency is proposing to establish a definition of "released for shipment." These changes are being proposed in response to subsequent requests from stakeholders and based on further Agency consideration.

### B. Statutory Authority

These proposed regulations are issued pursuant to the authority given the Administrator of EPA in sections 2 through 34 of FIFRA, 7 U.S.C. 136—136y. Sections 19(e) and (f) of FIFRA, 7 U.S.C. 136a(e) and (f), grant EPA broad authority to establish standards and

procedures to assure the safe use, reuse, storage, and disposal of pesticide containers. FIFRA section 19(e) requires EPA to promulgate regulations for the design of pesticide containers that will promote the safe storage and disposal of pesticides. FIFRA section 19(f) requires EPA to promulgate regulations prescribing procedures and standards for the removal of pesticides from containers prior to disposal.

FIFRA section 25(a), 7 U.S.C. 136w(a), authorizes EPA to issue regulations to carry out provisions of FIFRA.

### III. Proposed Changes to 40 CFR Part 152—Pesticide Registration and Classification Procedures

The Agency is proposing to amend § 152.3 to add a new definition for “released for shipment.” As discussed in subsequent units of this proposed rule, the Agency is proposing to use this term in § 156.159, § 165.20, § 165.40, and § 165.60. The Agency considered putting definitions for this term in both parts 156 and 165, but notes that because the term has also been used in § 167.3 and in various guidance documents, a generally applicable definition may be appropriate. The Agency is asking for comments on both the proposed definition itself and on the placement of the definition in the regulations. The proposed definition is as follows:

A product is released for shipment when the producer has packaged and labeled it in the manner in which it will be shipped, or has stored it in an area where finished products are ordinarily held for shipment. An individual product is only released for shipment once, except where subsequent events constitute production (e.g., relabeling, repackaging).

The proposed definition is consistent with EPA’s previously published definitions of “released for shipment”; the most recent of these appears in PR Notice 93-11, Supplement C (August 13, 1993), and in a 1984 proposed rule (49 FR 37916, September 26, 1984). The first sentence is essentially that of the 1984 proposed rule, which focuses on actions manifesting the producer’s intent to introduce a product into commerce. The second sentence would make it clear that products already in the channels of trade are all “released for shipment,” and that relabeled or reworked products must be released a second time.

### IV. Proposed Changes to 40 CFR Part 156—Labeling Requirements for Pesticides and Devices

The Container and Containment Rule added a new subpart H titled “Container Labeling” to 40 CFR part 156 that

requires the following information or statements on certain pesticide product labels:

- A statement identifying the container as nonrefillable or refillable.
- On nonrefillable containers, statements providing basic instructions for managing the container and a batch code.
- Cleaning instructions for some nonrefillable containers.
- Cleaning instructions for refillable containers at the end of their useful lives.

In addition, the Container and Containment Rule modified several existing requirements in 40 CFR 156.10, including allowing for blank spaces on the labels of some refillable containers for the net contents and EPA establishment number and adding a reference to the container and containment regulations in subpart H and 40 CFR part 156.

In this proposed rule, the Agency is proposing to amend the labeling requirements in 40 CFR part 156 subpart H.

#### A. Background

After promulgation of the Container and Containment Rule, the Agency was contacted by stakeholders with concerns about the compliance date associated with the labeling requirements; the implications of the phrase “sold or distributed” for the handling of packaged pesticide products that may be returned unused to a registrant at the end of a use season; and the scope of pesticide products and containers for which some of the labeling statements are being required.

1. *Compliance date.* Some registrants have asserted that they do not have sufficient time to change all labels for final packaging of pesticide products in time to meet the August 17, 2009, compliance date. These time constraints are due to the following factors:

i. Almost all pesticide product registrations are involved. Generally, changes to product labels are done on a product by product basis or only for products containing one active ingredient. In the case of changes required by the pesticide container and containment regulations, essentially all product registrations are involved (approaching 17,000 individual products).

ii. Often registrants sell multiple individual package sizes (often referred to as “SKUs”) under one product registration number. As a result of multiple SKUs being associated with individual registrations, the changes will affect many more final printed packages than individual registrations.

iii. The labels for certain types of seasonal products and consumer specialty products are unique and expensive to print. For example, for some pool chemicals, labeling is printed directly on buckets that will contain the pesticide product. Each label plate needed to print the buckets is expensive to produce, as is each individual printed bucket.

iv. The production of many consumer specialty products (pool chemicals, lawn chemicals) is on an annual and seasonal basis; therefore, for some products, there is only one opportunity each year to print new product labels.

v. Many registrants had delayed submitting revised product labels that include the new requirements until the Agency provided further guidance to explain the conditions under which registrants might submit revised labels under an expedited review process (that is, a notification process). Although this guidance has since published (Pesticide Registration (PR) Notice 2007-4, published on November 7, 2007); the 15 months that passed between the publication of the August 16, 2006, final rule and the publication of the PR Notice may have contributed to delays in amending labels.

2. *Labeling of returned products.* Registrants have also expressed concerns about how the new container and containment labeling requirements would apply to products that are returned to the manufacturer. The container and containment regulations provide that products distributed or sold by a registrant after August 17, 2009, must bear the new labeling statements. According to registrants, contracts with many consumer retail establishments require that seasonal consumer products remaining on the shelves at the end of the use season be returned to the manufacturer. As a result, any products bearing old labels and originally distributed in spring 2009 and that did not sell might be returned to registrants in the fall of 2009 after the August 17, 2009, compliance date. Subsequent sale or distribution of the returned products would not be in compliance with the container and containment regulations unless the products were relabeled. Registrants have indicated that relabeling of the returned products would be especially costly and difficult and that the products may require repackaging that could result in unintentional exposures to the pesticide; therefore, registrants would be more likely to dispose of returned product bearing old labeling rather than relabel or repackage the product. While the Agency believes that the label language required by the

container and containment regulations is important, the expected decrease in risk from improving handling practices for the relatively small number of returned containers is likely not significant enough to justify the cost of expensive relabeling, repackaging or disposal of product bearing old labels, and the potential exposure from repackaging or disposal of product. Accordingly, EPA proposes to change the phrase “distributed or sold” in § 156.159 to “released for shipment.” EPA considers a product released for shipment when the producer has packaged and labeled it in the manner in which it will be shipped, or has stored it in an area where finished products are ordinarily held for shipment. An individual product is only released for shipment once, except where subsequent events constitute production (e.g., relabeling, repackaging). Therefore, any products returned at the end of a use season could be re-distributed or sold and remain in compliance with the container and containment regulations.

3. *Scope of products and flexibility of requirements.* Some registrants are also concerned about the scope of products subject to the new container-type statements (see 40 CFR 156.140). The container and containment regulations require that either the statement “refillable container” or “nonrefillable container” be placed on the label or container of all pesticide products except plant-incorporated protectants. Registrants are requesting that the Agency exempt inherently or obviously nonrefillable packaging types from this requirement. These registrants believe that it is unduly burdensome and not appropriate to require the phrase “Nonrefillable container. Do not reuse or refill” on obviously nonrefillable packages. While the additional language will provide extra precautions for containers that physically could be reused or refilled, registrants maintain that these additional precautions are not necessary for containers that are inherently nonrefillable because existing labeling generally includes a phrase such as “Do not reuse this container,” and the container and containment regulations do not change this phrase. Examples of some types of containers that registrants consider obviously nonrefillable are aerosol spray cans, bait stations, and foil pouches for water soluble packets.

In addition, the Agency has recognized several additional types of registered pesticides for which it makes sense to reconsider the labeling statements described above. For example, some pesticides are not sold in

containers, such as impregnated repellent clothing articles. In this case, the labeling consists of a clothing tag, and it would serve no purpose for the tag to include the phrase “nonrefillable container.”

Finally, the Agency originally intended for the waiver/modification statement included in the residue removal section of the container and containment regulations (40 CFR 156.144(d)) to apply to all of the new label language requirements. However, as written, the regulations do not allow for waivers from the “nonrefillable container” or “refillable container” language.

EPA is proposing several amendments to the container and containment regulations to address these issues and to correct typographical and other errors, as follows:

- EPA proposes to change the compliance date associated with the container and containment labeling requirements to August 17, 2010.
- EPA proposes to change the phrase “distributed or sold” to “released for shipment” as associated with the labeling compliance date. In addition, EPA proposes to make a similar change to the language associated with the compliance date for the container and repackaging requirements as well.
- EPA proposes to exempt certain container types from the container type labeling statements required by the container and containment regulations (40 CFR 156.140) and to allow the Agency to approve modifications to that language on a case-by-case basis. The specific container types that EPA proposes to exempt are described in detail in Unit III.C. of this proposed rule.
- EPA proposes to correct typographical and other minor errors in the container and containment regulations as described in detail in Unit V of this proposed rule.

#### *B. Addition of Definitions Section to Subpart A*

In this proposed rule, the Agency is proposing to add a new definitions section (§ 156.3) to part 156 and to include an introductory paragraph in the definitions section noting that the terms used in part 156 have the same meaning as in the Act and 40 CFR part 152. This paragraph simply refers readers to the definitions in the Act and in part 152. In addition, the Agency is proposing to add to § 156.3 a definition for the term “dilutable,” since this term is used in part 156.

#### *C. Changes to Subpart H—Container Labeling*

1. *Identification of container types.* In this proposed rule, the Agency is proposing to exempt certain nonrefillable container types from the “identification of container type” requirements described in 40 CFR 156.140. The container types that EPA proposes to exempt are listed in proposed § 156.140(a)(5) and are as follows:

- Aerosol cans.
- Nonrefillable caulking tubes and other nonrefillable squeezable tube containers for paste, gel, or other similar formulas (e.g., crack and crevice application devices, unit dose application tubes).
- Foil packets for water soluble packaging, repellent wipes, and other single-use products.
- Tamper-resistant bait stations.
- Tamper-resistant cages for repellent or trapping strips.
- Packaging for pet collars.
- One-time use semiochemical dispersion devices.
- Any packaging that is destroyed by the use of the product contained therein.
- Any packaging that would be destroyed if reuse of the container were attempted (for example, bacteriostatic water filter cartridges, blister card packaging, etc.).

EPA proposes to exempt these container types from the requirement to include a statement identifying the container as a nonrefillable container in § 156.140(a)(1) and the requirement to include a reuse statement in § 156.140(a)(2). These sections of the rule require pesticide labels to include the phrase “Nonrefillable container. Do not reuse or refill this container” or one of the other statements about reuse in § 156.140(a)(2). Currently, many labels already include the statement “Do not reuse this container.”

EPA considers the container types listed above to be inherently nonrefillable because, after use of the pesticide, they do not appear to offer any practical use as containers. For most containers, the container type and reuse statements provide additional precautions and useful information; however, these precautions and additional information are not necessary for containers that are either highly unlikely or physically impossible to be reused or refilled. In addition, the majority of pesticide labels already include a phrase such as “Do not reuse this container” to prohibit any attempted reuse.

Registrants also requested exemptions for bags (flexible packaging) and



syringes. EPA has not proposed an exemption for flexible packaging and syringes because the Agency believes it is likely that persons might consider these to be useful as containers or applicators for pesticides or other materials after initial use. The Agency believes that the potential for adverse effects resulting from refill and/or reuse of these containers is greater than the burdens associated with labeling these containers as nonrefillable containers and expressly prohibiting reuse or refill of the containers.

EPA requests comments on the proposed approach for exempting certain pesticide container types from the requirement to include a statement identifying the container as a nonrefillable container in § 156.140(a)(1) and the requirement to include a reuse statement in § 156.140(a)(2). In particular, EPA requests comments regarding criteria that could be used to determine whether particular containers should be exempt; the types of containers that are included in the exemption; and whether other containers should also be exempted. This may include any additional information on flexible packaging and syringes that might cause the Agency to reconsider those types of containers for exemption.

EPA is proposing to exempt these container designs only from the statement identifying the container as a nonrefillable container in § 156.140(a)(1) and the requirement to include a reuse statement in § 156.140(a)(2). These containers would still be required to bear a recycling/reconditioning statement per § 156.140(a)(3). EPA is not proposing to automatically exempt these container types from the requirement to have a statement about recycling/reconditioning because the Agency wants to facilitate recycling wherever it is feasible. In addition, EPA believes that most labels already comply with that requirement because they include a statement about recycling. EPA requests comments on this approach and specifically about whether container types that are exempt from § 156.140(a)(1) and § 156.140(a)(2) should also be exempt from § 156.140(a)(3).

The Agency is also proposing to amend § 156.140 to add a new paragraph (c) that would allow EPA to modify or waive the label statements required by § 156.140. The Agency originally intended for the waiver/modification statement included in the residue removal section (40 CFR 156.144(d)) to apply to all label language. However, as written, the

regulations do not allow for exemptions from the “nonrefillable container” or “refillable container” language. The Agency is proposing to allow modifications or waivers of the required language so that the Agency can determine on a case-by-case basis whether the requirements for the nonrefillable container, reuse, recycling/reconditioning and refillable container label statements are appropriate.

There is a trade-off to exempting container types in the regulations and dealing with registrant-requested changes on a case-by-case basis through the waiver/modification process. Dealing with registrant waiver/modification changes on a case-by-case basis is flexible and can account for future container developments and non-traditional container types for which the required label statements may not be appropriate. However, the waiver/modification process is time- and labor-intensive for both the Agency and registrants. EPA requests comments on whether the proposed approach to specifically exempt certain container types and to allow waivers/modifications results in an appropriate balance.

The last substantive change that the Agency is proposing to make to § 156.140 is a change to add paragraph (d), which would exempt pesticide-impregnated objects that are registered as pesticides and not packaged in a container from all of the requirements in § 156.140. These include such products as repellent-impregnated articles of clothing and other repellent-impregnated fabric articles. It would not be appropriate to refer to the pesticide container on the labels for these types of products if no container exists. This is an unusual situation; however, the Agency has decided to propose to include this exemption as a general statement to eliminate the need for the individual submission and review of exemption requests for these types of products in the future.

In addition, EPA is proposing minor revisions to the introductory paragraphs in § 156.140(a) and § 156.140(b) to reference the exemptions in proposed § 156.140(a)(5) and § 156.140(d) and the proposed waiver/modification provision in § 156.140(c).

**2. Changes to residue removal instructions.** The Agency is proposing to add § 156.144(e) to exempt compressed gas cylinders from the requirement to provide residue removal instructions. The Agency is proposing this exemption because it may not be safe or appropriate for end users to attempt to clean compressed gas cylinders. Generally, gas cylinders bear label

language specific to the use of a compressed cylinder (see PR Notice 84-5), and EPA had not intended the Container and Containment Rule to supersede any existing precautionary language for gas cylinders. In the 2006 final rule, EPA exempted containers that hold pesticides that are gaseous at atmospheric temperature and pressure from the refillable container and repackaging requirements in 40 CFR part 165. The proposed exemption in this proposed rule would make the label language requirements of § 156.144 consistent with 40 CFR part 165.

In addition, the Agency is proposing to add § 156.144(f) to exempt from the requirements of § 156.144 pesticide-impregnated objects that are registered as pesticides and not packaged in a container. These include such products as repellent-impregnated articles of clothing and other repellent-impregnated fabric articles, such as tents or mosquito netting. In the absence of a container, there is no need for residue removal instructions. The Agency proposes to include this exemption to eliminate the need for the individual submission and review of exemption requests for these products in the future.

In § 156.144(g), the Agency is proposing that pesticide product labels do not have to bear residue removal instructions applicable to transport vehicles. Transport vehicles such as rail cars and other cargo-carrying vehicles are classified as containers in the container and containment regulations, but are exempt from the refillable container and repackaging regulations in 40 CFR part 165. The Agency is proposing that pesticide product labels do not have to bear residue removal instructions applicable to transport vehicles because the residue removal label language in the container and containment regulations is not tailored to the unique nature of transport vehicle containers. This change will make the residue removal label language requirements consistent with the refillable container and repackaging requirements, with regard to transport vehicles.

Finally, EPA is proposing a minor revision to change § 156.144(a) to reference the proposed exemptions in § 156.144(e), (f), and (g).

**3. Changes to compliance date.** The Agency is proposing to extend the compliance date associated with the labeling requirements of part 156, subpart H, (§ 156.159) from August 17, 2009, to August 17, 2010. This change will allow additional time for registrants to change all labels for final packaging for all registered products and SKUs and



remain in compliance with the container and containment regulations. The Agency is maintaining August 17 as the compliance date for consistency with the other compliance dates in the container and containment regulations. EPA believes that maintaining August 16 or 17 of varying years as a compliance date for all the different requirements in the container and containment regulations will facilitate compliance by the regulated community. EPA requests comments on the proposed compliance date for the part 156, subpart H, label requirements and specifically whether there is any advantage to extending the date a few additional months based on the typical schedule and activities involved with the production, distribution and sale of pesticides.

In addition, the Agency is proposing to change the phrase “distributed or sold” to “released for shipment,” as associated with the compliance date. This change will allow pesticide products that were initially distributed or sold to retailers before the compliance date, but which may be returned unused to the producer at the end of a use season, to be distributed or sold the following season without relabeling. EPA believes the number of containers which would be affected by this change is relatively small, and as a result, EPA expects relabeling would involve both high per-unit costs and low benefits. This change is consistent with language used by the Agency for other situations where it seeks label changes. In addition, this change is consistent with the decision in the Container and Containment Rule to not finalize a 5-year channels of trade provision. The Agency decided not to include a 5-year channels of trade provision to minimize the disruption and burden of implementing this rule and because the Agency does not believe that current products and containers pose enough hazard to justify the costs of recalling them from retailers or distributors (71 FR 47356).

## V. Proposed Changes to 40 CFR Part 165—Pesticide Management and Disposal

### A. Changes to Definitions in Subpart A

The Agency is proposing some changes to the definitions in § 165.3. In particular, the Agency is proposing to include an introductory paragraph to state that the terms used in this part have the same meaning as the terms used in the Act and in 40 CFR part 152. In addition, the Agency is proposing to revise two definitions, add three new definitions, and delete three definitions.

The Agency is proposing to change the definition of “agricultural pesticide” to “...any product labeled for use in or on a farm, forest, nursery, or greenhouse.” This change is being proposed in order to be consistent with the definition of “agricultural establishment” in the Worker Protection Standard (WPS) at 40 CFR 170.3. EPA believes that using this definition will facilitate compliance with and understanding of the pesticide container and containment regulations because the definition of agricultural establishment in the WPS has a long history and is well-understood. Introducing a new definition of “agricultural pesticide” that does not conform exactly to the definition of “agricultural establishment” could cause unnecessary confusion. The Agency does not believe that changing the definition of “agricultural pesticide” substantially changes the scope of the pesticide container and containment regulations, but requests comment on the potential impacts of revising the definition of agricultural pesticide.

The Agency is proposing to delete the definition of “flowable concentrate” and to add a new definition for the term “suspension concentrate,” as follows: “...a stable suspension of active ingredients in a liquid intended for dilution with water before use.” EPA is making these changes based on input from the registrants that “suspension concentrate” is the term currently used in formulation chemistry to describe the pesticide formulations that EPA originally described with the term “flowable concentrate.” The Agency is also changing references to “flowable concentrate” to “suspension concentrate” in § 165.25(f)(2) and § 165.27(b)(5).

The Agency is proposing to revise the definition of “pesticide compatible” as applied to containment to delete “secondary” from the two references to “secondary containment” and to change the word “materials” to “substances,” as applied to the substances being contained. “Secondary” is misleading in this definition because the compatibility requirement applies to both secondary containment units and containment pads. The change from “materials” to “substances” is simply editorial since “materials” is also used in the phrase “containment construction materials.”

The Agency is proposing to add a definition for the term “capacity” since this term is used in part 165 to make clear that the container capacities specified refer to the rated capacity of the container (also known as the nominal or design capacity). In order to allow space for thermal expansion,

containers typically hold a volume somewhat greater than the rated capacity. The rated capacity of a container is generally readily apparent, and actual capacity generally is not. This makes rated capacity a more useful tool for distinguishing containers for purposes of the regulations. While EPA did specify rated capacity in § 165.65(d)(4) and § 165.70(e)(4), it did not do so consistently throughout part 165. The proposed revision would confirm that all references to container capacity mean rated capacity.

The Agency is proposing to add to § 165.3 a definition for the term “dilutable” since this term is used in part 165. This term is defined in § 165.25(f)(1), so the same definition should also appear in § 165.3.

The Agency is proposing to remove the definitions of “pressure rinse” and “triple rinse” because these terms are not used in part 165.

### B. Changes to Subpart B—Nonrefillable Container Standards: Container Design And Residue Removal

1. *General provisions.* The Agency is proposing to change the compliance date language in § 165.20(c) to be consistent with the proposed compliance date language in revised § 156.159 by using the phrase “released for shipment” instead of “distributed or sold.” This change will allow product that was initially distributed or sold to retailers before the compliance date, but which may be returned unused to the producer at the end of a use season, to be sold or distributed the following season without changing the container. EPA believes the number of containers that would be affected by this change is relatively small and, as a result, EPA expects changing the container would involve both high per-unit costs and low benefits. This change is consistent with language used by the Agency for situations where it seeks label changes.

In addition, the Agency is proposing an editorial change to § 165.20(c) to change “...that complies with these regulations” to “...that complies with the regulations of this subpart” to be more precise.

2. *Changes to scope of pesticide products.* The Agency is proposing to make an editorial change to the heading in § 165.23(d) to remove quotes from the term antimicrobial.

3. *Changes to nonrefillable container standards.* The Agency is proposing to change § 165.25(a) and § 165.25(b) to clarify that the requirement to comply with the adopted Department of Transportation (DOT) standards referenced therein only applies to portable containers, which was the

Agency's intent in the August 16, 2006 rule.

The Agency is also proposing to clarify that the DOT regulations which are adopted in § 165.25 apply to the pesticide product as it is packaged for transportation in commerce. This change is being proposed to be consistent with the DOT regulations in terms of the form of the packaging that is subject to the adopted DOT regulations. The other nonrefillable container requirements in § 165.25, including the requirements for closures, dispensing capability and residue removal, apply to the container used to enclose a pesticide, i.e., the receptacle that comes into direct contact with the pesticide. However, the DOT hazardous materials regulations apply to a package as it is prepared for transportation in commerce. For example, 2.5-gallon jugs are often shipped for transportation in commerce as pairs of jugs in a cardboard box. When the jugs contain DOT hazardous materials, it is the boxed package that would have to comply with the DOT regulations. EPA proposes to amend § 165.25 to clarify that it is the product as packaged for transportation in commerce that must comply with those DOT regulations that are adopted in § 165.25 for pesticides that are not hazardous materials. On the other hand, the other § 165.25 requirements – for closures, dispensing capability and residue removal – would apply to the immediate pesticide container (e.g., the 2.5-gallon jug itself). EPA requests comments on whether the proposed change accomplishes the goal of clarifying that the adopted DOT requirements in § 165.25(a) are intended to apply to the container or packaging as it is transported in commerce. The Agency also requests suggestions for alternative revisions to § 165.25(a) that would provide that clarification.

In addition, the Agency is proposing to change §§ 165.25(a), (b)(1) and (b)(2) to add an additional citation to the list of DOT regulations with which non-refillable containers must comply. The Agency is proposing this change to include the requirements of 49 CFR part 107, subpart B that are applicable to special permits because this subpart regulates exemptions from DOT requirements. The original intent of § 165.25 was that a pesticide packaged in compliance with DOT's requirements would meet the requirements of § 165.25(a) and (b). This proposed change is consistent with the original intent and simply clarifies that if a pesticide is in compliance with DOT requirements via an exemption, it is also acceptable under the container and containment regulations.

The Agency is also proposing to add three additional citations to the list of DOT regulations in § 165.25(a) with which a nonrefillable container must comply. Specifically, EPA is proposing to add 49 CFR 173.4, 173.5, and 173.6 to incorporate several additional DOT exceptions so they would apply to pesticides that are not hazardous materials. These proposed exceptions are for small retailers, customers, research and sales personnel (49 CFR 173.6), small quantities (49 CFR 173.4), and transportation of agricultural products over local roads between fields of the same farm (49 CFR 173.5). The proposal to add these exceptions to the pesticide container regulations is intended to identify several situations where the DOT requirements adopted by § 165.25 would not apply. Similar to the adopted DOT provision in 49 CFR 173.155, which provides exceptions for Class 9 (miscellaneous hazardous materials) chemicals, adopting these provisions would clarify that certain containers and packages would not have to comply with all of the DOT hazardous materials requirements. Instead, the containers and packages would only have to comply with conditions specified in those regulatory exceptions.

The Agency is proposing these same changes to the corresponding DOT-related requirements for refillable containers in § 165.45.

Also in § 165.25, the Agency is proposing to change paragraph (f)(2) to substitute the term “suspension concentrate” for “flowable concentrate.” EPA is making this change based on input from the registrants that “suspension concentrate” is the term currently used in formulation chemistry to describe the pesticide formulations that EPA originally described with the term “flowable concentrate.”

4. *Changes to reporting and recordkeeping.* The Agency is proposing an editorial change to the introductory paragraph in § 165.27(b) to properly cite § 165.25 – § 165.27.

The Agency is proposing to add new §§ 165.27(b)(4)(iii) and (b)(5)(iii) which would provide that evidence of an EPA-approved waiver request shall be sufficient to demonstrate compliance with the container dispensing capability and container residue removal standards.

Also in § 165.27, the Agency is proposing to change paragraph (b)(5) to substitute the term “suspension concentrate” for “flowable concentrate.” EPA is making this change based on input from the registrants that “suspension concentrate” is the term currently used in formulation chemistry

to describe the pesticide formulations that EPA originally described with the term “flowable concentrate.”

#### *C. Changes to Subpart C—Refillable Container Standards: Container Design*

1. *General provisions.* The Agency is proposing to add a new § 165.40(b)(3) to alert refillers to the existence of a refiller-specific exemption from some of the DOT-related requirements in § 165.45(a).

The Agency is proposing a change to the compliance date language in § 165.40(c) to be consistent with the proposed compliance date language in § 156.159 by using the phrase “released for shipment” instead of “distributed or sold.” See the discussion in Unit V.B.1. of this proposal for the rationale behind this change.

In addition, the Agency is proposing an editorial change to § 165.40(c) to change “...that complies with these regulations” to “...that complies with the regulations of this subpart” to be more precise.

2. *Changes to scope of pesticide products.* The Agency is proposing five editorial changes to § 165.43 to remove quotes from the term antimicrobial in the headings of paragraphs (c), (d), and (e), to remove an extraneous “by” in paragraph (f), and to add a space in paragraph (g).

3. *Changes to refillable container standards.* The Agency is proposing to change § 165.45 to clarify that DOT standards only apply to portable containers, to clarify that the DOT regulations which are adopted in § 165.45 apply to a pesticide product as it is packaged for transportation in commerce, to add a citation to 49 CFR part 107, subpart B for completeness and to add citations to the DOT exceptions in 49 CFR 173.4, 173.5, and 173.6. These proposed changes are discussed in more detail in Unit V.B.3. about the proposed revisions to the nonrefillable container requirements in § 165.25.

#### *D. Changes to Subpart D—Standards For Repackaging Pesticide Products Into Refillable Containers*

1. *General provisions.* The Agency is proposing a change to the compliance date language in § 165.60(c) to be consistent with the proposed compliance date language in § 156.159 by using the phrase “released for shipment” instead of “distributed or sold.” See the discussion in Unit V.B.1. of this proposal for the rationale behind this change.

In addition, the Agency is proposing an editorial change to § 165.60(c) to change “...that complies with these

regulations” to “...that complies with the regulations of this subpart” to be more precise.

2. *Scope of pesticide products included.* The Agency is proposing an editorial correction in § 165.63 to correctly cite the appropriate regulations in the table under paragraph (d)(1). The citations in the two rows about container inspection need to be corrected.

3. *Registrants who distribute or sell pesticide products in refillable containers.* The Agency is proposing to revise § 165.65(i)(2)(iii) to allow an identifying code other than a serial number as an acceptable mechanism to identify refillable containers in the registrant's records. This change is needed to be consistent with the requirement in § 165.45(d), which requires refillable containers to be marked with a serial number or other identifying code that will distinguish between the individual container and all other containers.

4. *Registrants who distribute or sell pesticide products to refillers for repackaging.* The Agency is proposing to revise § 165.67(b)(2)(ii) for clarity. This paragraph covers the situation where a pesticide product is repackaged by a refilling establishment at an end user's site.

The Agency is proposing to change § 165.60(d) to clarify that the written contract that registrants must provide to refillers is the contract referenced in § 165.67(b)(3).

5. *Refillers who are not registrants.* The Agency is proposing to revise § 165.70(b)(2)(ii) for clarity, similar to the corresponding provision in § 165.67 for registrants.

The Agency is proposing to change § 165.70(e)(5)(i) to clarify that the written contract that refillers must obtain is the contract referenced in § 165.70(b)(3). EPA is also proposing to revise § 165.70(j)(2)(iii) to allow another identifying code other than a serial number as an acceptable mechanism to track refillable containers, similar to the corresponding requirement in § 165.65 for registrants that sell or distribute pesticides directly in refillable containers.

#### *E. Change to Subpart E—Standards For Pesticide Containment Structures*

1. *General provisions.* The Agency is proposing an editorial correction to § 165.80(b)(1) to change “that” to “than.”

2. *Design and capacity requirements for new structures.* The Agency is proposing editorial changes to § 165.85(a)(3) to remove “secondary” in this paragraph because the Agency did

not intend to limit the compatibility requirement to secondary containment structures and to change the word “materials” to “substances” where it refers to substances being contained.

The Agency is proposing an editorial change to § 165.85(d) to clarify that the word “new” in this paragraph applies to a new secondary containment unit and not the pesticide containers themselves.

The Agency is proposing two changes to state that dry pesticide container storage areas must have a floor, consistent with the original intentions. EPA is proposing to move the existing requirement that stationary dry pesticide container storage areas have curbs from § 165.85(f)(3) to § 165.85(f)(4) and to insert a new paragraph (f)(3) that would require such areas to have floors as well. The requirement that these areas have floors is implied in the container and containment regulations because it does not make sense to have a curb made out of concrete, steel, or other rigid material without also having a floor. The proposed change would make this requirement explicit. In addition, the Agency is proposing editorial changes to rephrase the new § 165.85(f)(4) for clarity.

3. *Design and capacity requirements for existing structures.* The Agency is proposing editorial changes to § 165.87(a)(3) to remove “secondary” in this paragraph and to change “materials” to “substances,” similar to the proposed change in the corresponding regulations for new containment structures in § 165.85.

The Agency is proposing an editorial change to § 165.87(d) to clarify that the word “existing” in paragraph (d) applies to an existing secondary containment unit and not the pesticide containers themselves.

The Agency is proposing to change § 165.87 to state that dry pesticide container storage areas must have a floor, and to make editorial changes for clarity, similar to the corresponding changes to § 165.85(f) for new structures.

4. *Operational, inspection and maintenance requirements for all new and existing containment structures.* The Agency is proposing changes to the timing requirements for cleanup of spills in § 165.90(a)(2) and for repair of containment structures in § 165.90(b)(2). The Agency is proposing to change language that currently requires cleanup or repair by the end of the day to allow additional time to complete cleanup or repair in a situation in which attempting cleanup or repair may result in hazards that may be avoided if cleanup or repair were reasonably delayed. In most cases, and for routine spills and leaks, the

requirement for cleanup by the end of the day would still apply. The Agency is requesting comment on this approach and the proposed language.

The Agency is proposing to change § 165.90(b)(3), which prohibits facilities from storing pesticide on a structure that needs to be repaired. EPA proposes to revise this paragraph to not allow any additional pesticide to be stored on a containment structure in need of repair. This change was made for practical reasons, i.e., to allow product already stored on that containment structure to remain so as not to require movement of pesticide containers. There is potentially greater risk from transferring pesticide products outside of a containment structure (and then back after repairs have been made) than to repair a structure while pesticide products remain on the containment structure. Also, the Agency is proposing to delete the second sentence from § 165.90(b)(3) because it would not be necessary after making this change.

The Agency is also proposing to revise § 165.90(b)(1) to clarify that the containment structures themselves must be inspected monthly, in addition to the containers and appurtenances. This is implied in the existing recordkeeping requirements (see § 165.95(a)), but EPA is proposing to modify this paragraph to make the requirement explicit.

5. *States with existing containment programs.* The Agency is proposing an editorial change to § 165.97(b)(1) to correct the term “States” to read “State’s.”

#### **VI. Economic Impacts**

EPA prepared two Economic Analyses (EAs) of the potential costs and benefits associated with the August 16, 2006, Container and Containment Rule, one for the container requirements and another for the containment requirements. The EAs, entitled “Economic Analysis of the Pesticide Container Design and Residue Removal Standards” and “Economic Analysis of the Bulk Pesticide Containment Structure Regulations,” are available in the docket for the pesticide Container and Containment Rule under docket identification number EPA-HQ-OPP-2005-0327. The Agency has prepared an addendum to these EAs to address the potential changes in the estimated impacts resulting from this proposed rule. The addendum to the EA, entitled “Addendum to the June 1, 2006, Economic Analysis of the Bulk Pesticide Container Design and Residue Removal Standards” is briefly summarized here, and is available in the docket for this rulemaking.

EPA estimated the total annual cost of the August 16, 2006, Container and Containment Rule to be \$11.3 million (\$8.37 million for containers plus \$2.93 million for containment) and the total annual benefits from the final rule to be \$17 to \$23.4 million. When the estimated cost of the August 16, 2006, rule is adjusted to consider the amendments being proposed, there is an annual cost reduction of approximately \$0.23 to \$0.32 million due to a reduction in the number of labels that would need to be revised. There is no difference in the total annual benefits from the August 16, 2006, rule.

## VII. FIFRA Mandated Reviews

In accordance with FIFRA sec. 25(a), the Agency submitted a draft of this proposed rule to the Committee on Agriculture in the House of Representatives, the Committee on Agriculture, Nutrition, and Forestry in the United States Senate, and the FIFRA Scientific Advisory Panel (SAP). The Secretary of Agriculture waived review of this proposed rule.

## VIII. Statutory and Executive Order Reviews

### A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this proposed rule is not a "significant regulatory action" because these requirements will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. As such, this proposed rule is not subject to review under Executive Order 12866.

### B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden or activities requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection activities contained in the existing regulations are already approved under OMB control number 2070-0133, and are also identified under EPA ICR No. 1632. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby

certifies that this proposed rule does not have a significant adverse economic impact on a substantial number of small entities. This proposed rule is expected to result in a slight 2% to 3% decrease in the estimated total costs of the Container and Containment Rule. As such, there are not expected to be any adverse economic impacts of affected entities, regardless of their size. The factual basis for the Agency's determination is presented in the addendum to the EA, entitled "Addendum to the June 1, 2006, Economic Analysis of the Bulk Pesticide Container Design and Residue Removal Standards," prepared for this proposed rule, which is summarized in Unit VI., and a copy of which is available in the docket for this rulemaking. The following is a brief summary of the factual basis for this certification.

Under the RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined in accordance with the RFA as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Based on the industry profiles that EPA prepared as part of the EAs for the 2006 rulemaking, EPA determined that the 2006 rulemaking was not expected to impact any small not-for-profit organizations or small governmental jurisdictions. Since this is a proposed amendment to that rulemaking, EPA has determined that this determination also applies to this proposed rule. As such, "small entity" for purposes of the addendum EA prepared for this proposed rule, is synonymous with "small business." Using the size standards established by the Small Business Administration, "small businesses" potentially impacted by this proposed rule are expected to include the same types of businesses described in the EAs prepared for the 2006 rulemaking. As indicated in those EAs, the small business size standard varies based on the primary NAICS code associated with the business. Specifically, the small businesses size standards varies from 100 or fewer workers (e.g., NAICS 422910, Farm Suppliers Wholesalers) to 1,000 or fewer workers (e.g., NAICS 325188, Inorganic

Chemical Manufacturing), with the majority of small businesses having 500 or fewer workers (e.g., 325320, Pesticide/Agricultural Chemical Manufacturing).

In general, EPA strives to minimize potential adverse impacts on small entities when developing regulations to achieve the environmental and human health protection goals of the statute and the Agency. EPA solicits comments specifically about potential small business impacts.

### D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), EPA has determined that this action does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector in any one year. Since State, local, and tribal governments are rarely pesticide applicants or registrants, this rule is not expected to affect small governments and contains no regulatory requirements that might significantly or uniquely affect small governments. Accordingly, this action is not subject to the requirements of sections 202 and 205 of UMRA.

### E. Executive Order 13132

Pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this proposed rule does not have "federalism implications," because it would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Order. Thus, Executive Order 13132 does not apply to this proposed rule.

### F. Executive Order 13175

As required by Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 22951, November 6, 2000), EPA has determined that this action does not have tribal implications because it will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. EPA is not aware of any tribal governments which are pesticide registrants, refillers or dealers storing large quantities of pesticides.

Thus, Executive Order 13175 does not apply to this action.

#### G. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), does not apply to this action because it is not designated as an “economically significant” regulatory action as defined by Executive Order 12866 (see Unit VIII.A.), nor does it establish an environmental standard that is intended to have a negative or disproportionate effect on children. EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action does not establish an environmental standard intended to mitigate health or safety risks.

#### H. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) because it is not designated as an “economically significant” regulatory action as defined by Executive Order 12866 (see Unit VII.A.), nor is it likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not impose any technical standards that would require Agency consideration of voluntary consensus standards.

#### J. Executive Order 12898

This action does not have an adverse impact on the environmental and health conditions in low-income and minority

communities. Therefore, under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency does not need to consider environmental justice-related issues.

#### List of Subjects in 40 CFR Part 152

Environmental protection, Labeling, Pesticides and pests.

#### List of Subjects in 40 CFR Part 156

Environmental protection, Labeling, Pesticides and pests.

#### List of Subjects in 40 CFR Part 165

Environmental protection, Packaging and containers, Containment structures, Pesticides and pests.

Dated: May 30, 2008.

Stephen L. Johnson,  
Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

#### PART 152—[AMENDED]

1. The authority citation for part 152 would continue to read as follows:

**Authority:** 7 U.S.C. 136-136y; Subpart U is also issued under 31 U.S.C. 9701.

2. Amend § 152.3 to add alphabetically a definition for “Released for Shipment” to read as follows:

##### § 152.3 Definitions.

\* \* \* \* \*

*Released for shipment.* A product is released for shipment when the producer has packaged and labeled it in the manner in which it will be shipped, or has stored it in an area where finished products are ordinarily held for shipment. An individual product is only released for shipment once, except where subsequent events constitute production (e.g., relabeling, repackaging).

\* \* \* \* \*

#### PART 156—[AMENDED]

3. The authority citation for part 156 would continue to read as follows:

**Authority:** 7 U.S.C. 136 through 136y.

4. Add a new § 156.3 to read as follows:

##### § 156.3 Definitions.

Terms used in this part have the same meaning as in the Act and part 152 of this chapter. In addition, as used in this part, the following terms shall apply.

*Dilutable* means that the pesticide product’s labeling allows or requires the pesticide product to be mixed with a

liquid diluent prior to application or use.

5. Amend § 156.140 by revising the introductory text of paragraph (a), by revising the introductory text of paragraph (b), and by adding paragraphs (a)(5), (c) and (d) to read as follows:

##### § 156.140 Identification of container types.

\* \* \* \* \*

(a) *Nonrefillable container.* For nonrefillable containers, the statements in paragraphs (a)(1) through (a)(4) of this section are required except as provided in paragraphs (a)(5), (c), and (d) of this section. If placed on the label, the statements in paragraphs (a)(1) through (a)(3) of this section must be under an appropriate heading under the heading “Storage and Disposal.” If any of the statements in paragraphs (a)(1) through (a)(3) of this section are placed on the container, an appropriate referral statement such as “See container for recycling [or other descriptive word] information.” must be placed on the label under the heading “Storage and Disposal.”

\* \* \* \* \*

(5) *Exemptions.* Pesticide products packaged in the following nonrefillable containers are exempt from the requirements in paragraphs (a)(1) and (a)(2) in this section:

- (i) Aerosol cans.
- (ii) Nonrefillable caulking tubes and other nonrefillable squeezable tube containers for paste, gel, or other similar formulas.
- (iii) Foil packets for water soluble packaging, repellent wipes, and other single use products.
- (iv) Tamper-resistant bait stations.
- (v) Tamper-resistant cages for repellent or trapping strips.
- (vi) Packaging for pet collars.
- (vii) One-time use semiochemical dispersion devices.
- (viii) Any packaging that is destroyed by the use of the product contained.
- (ix) Any packaging that would be destroyed if reuse of the container were attempted.

(b) *Refillable container.* For refillable containers, one of the following statements is required except as provided in paragraphs (c) and (d) of this section. If placed on the label, it must be under the heading “Storage and Disposal.” If the statement is placed on the container, an appropriate referral statement, such as “Refilling limitations are on the container.” must be placed under the heading “Storage and Disposal.”

\* \* \* \* \*

(c) *Modification.* EPA may, on its own initiative or based on data or

information submitted by any person, modify or waive the requirements of this section or permit or require alternative labeling statements.

(d) *Exemption for pesticide-impregnated objects that are registered as pesticides.* Pesticide-impregnated objects that are registered as pesticides and not packaged in a container are exempt from the identification of container type requirements in this section. These could include such products as repellent-impregnated articles of clothing and other repellent-impregnated fabric articles, such as tents or mosquito netting, that are not sold in containers.

6. Amend § 156.144 by revising paragraph (a), and by adding paragraphs (e), (f), and (g) to read as follows:

**§ 156.144 Residue removal instructions – general.**

(a) *General.* Except as provided by paragraphs (c) through (g) of this section, the label of each pesticide product must include the applicable instructions for removing pesticide residues from the container prior to container disposal that are specified in § 156.146 and § 156.156. The residue removal instructions are required for both nonrefillable and refillable containers.

(e) *Exemption for compressed gas cylinders.* Pesticide products that are packaged in compressed gas cylinders or containers that hold pesticides that are gaseous at atmospheric temperature and pressure are exempt from the residue removal instruction requirements in this section through § 156.156.

(f) *Exemption for pesticide-impregnated objects that are registered as pesticides.* Pesticide-impregnated objects that are registered as pesticides and not packaged in a container are exempt from the residue removal instruction requirements in this section through § 156.156. These could include such products as repellent-impregnated articles of clothing and other repellent-impregnated fabric articles, such as tents or mosquito netting, that are not sold in containers.

(g) *Exemption for transport vehicles.* Pesticide product labels do not have to bear residue removal instructions applicable to transport vehicles (e.g., tank cars).

7. Revise § 156.159 to read as follows:

**§ 156.159 Compliance date.**

As of August 17, 2010, all pesticide products released for shipment by a registrant must have labels that comply with §§ 156.10(d)(7), 156.10(f),

156.10(i)(2)(ix), 156.140, 156.144, 156.146, and 156.156.

**PART 165—[AMENDED]**

8. The authority citation for part 165 would continue to read as follows:

**Authority:** 7 U.S.C. 136 through 136y.

9. Amend § 165.3 as follows:

a. By adding an introductory paragraph.

b. By revising the definitions for “Agricultural pesticide” and “Pesticide compatible” as applied to containment.

c. By adding alphabetically new definitions for “Capacity,” “Dilutable,” and “Suspension concentrate.”

d. By removing the definitions for “Flowable concentrate,” “Pressure rinse,” and “Triple rinse.”

**§ 165.3 Definitions.**

Terms used in this part have the same meaning as in the Act and part 152 of this chapter. In addition, as used in this part, the following terms shall apply.

*Agricultural pesticide* means any pesticide product labeled for use in or on a farm, forest, nursery, or greenhouse.

*Capacity* means, as applied to containers, the rated capacity of the container.

*Dilutable* means that the pesticide product’s labeling allows or requires the pesticide product to be mixed with a liquid diluent prior to application or use.

*Pesticide compatible* means, as applied to containment, that the containment construction materials are able to withstand anticipated exposure to stored or transferred substances without losing the capacity to provide the required containment of the same or other substances within the containment area.

*Suspension concentrate* means a stable suspension of active ingredients in a liquid intended for dilution with water before use.

10. Amend § 165.20 by revising paragraph (c) to read as follows:

**§ 165.20 General provisions.**

(c) *When do I have to comply?* As of August 17, 2009, any pesticide product packaged in a nonrefillable container and released for shipment by you must be packaged in a nonrefillable container that complies with the regulations of this subpart.

11. Amend § 165.23 by revising the heading of paragraph (d) as follows:

**§ 165.23 Scope of pesticide products included.**

(d) *How will EPA determine if an antimicrobial pesticide product otherwise exempted must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment?*

12. Amend § 165.25 by revising paragraph (a), (b), and (f)(2) to read as follows:

**§ 165.25 Nonrefillable Container Standards.**

(a) *What Department of Transportation (DOT) standards do my nonrefillable containers have to meet under this part if my pesticide product is not a DOT hazardous material?* A pesticide product that does not meet the definition of a hazardous material in 49 CFR 171.8 must be packaged in a nonrefillable container that, if portable, is designed, constructed, and marked to comply with the requirements of 49 CFR 173.4, 173.5, 173.6, 173.24, 173.24a, 173.24b, 173.28, 173.155, 173.203, 173.213, 173.240(c), 173.240(d), 173.241(c), 173.241(d), part 178, and part 180 that are applicable to a Packing Group III material, or, if subject to a special permit, according to the applicable requirements of part 107 subpart B. The requirements in this paragraph apply to the pesticide product as it is packaged for transportation in commerce.

(b) *What DOT standards do my nonrefillable containers have to meet under this part if my pesticide product is a DOT hazardous material?* (1) If your pesticide product meets the definition of a hazardous material in 49 CFR 171.8, the DOT requires your pesticide product to be packaged according to 49 CFR parts 171-180 or, if subject to a special permit, according to the applicable requirements of part 107 subpart B.

(2) For the purposes of these regulations, a pesticide product that meets the definition of a hazardous material in 49 CFR 171.8 must be packaged in a nonrefillable container that, if portable, is designed, constructed, and marked to comply with the requirements of 49 CFR parts 171-180 or, if subject to a special permit, according to the applicable requirements of part 107 subpart B. The requirements in this paragraph apply to the pesticide product as it is packaged for transportation in commerce.

(f) \*

(2) The test must be conducted only if the pesticide product is a suspension concentrate or if EPA specifically requests the records on a case by case basis.

\* \* \* \* \*

13. Amend § 165.27 by revising the introductory text of paragraph (b), and the introductory text of paragraph (b)(5), and by adding paragraphs (b)(4)(iii), and (b)(5)(iii) to read as follows:

**§ 165.27 Reporting and recordkeeping.**

\* \* \* \* \*

(b) *What recordkeeping do I have to do for my nonrefillable containers?* For each pesticide product that is subject to §§ 165.25 - 165.27 and is distributed or sold in nonrefillable containers, you must maintain the records listed in this section for as long as a nonrefillable container is used to distribute or sell the pesticide product and for 3 years after that. You must furnish these records for inspection and copying upon request by an employee of EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe. You must keep the following records:

\* \* \* \* \*

(4) \* \* \*

(iii) A copy of EPA's approval of a request for a waiver from the container dispensing requirement.

(5) At least one of the following records pertaining to the nonrefillable container residue removal requirement in § 165.25(f) if the pesticide product is a suspension concentrate or if EPA specifically requests the records on a case by case basis:

\* \* \* \* \*

(iii) A copy of EPA's approval of a request for a waiver from the residue removal standard requirement.

14. Amend § 165.40 by adding paragraph (b)(3), and by revising paragraph (c) to read as follows:

**§ 165.40 General provisions.**

\* \* \* \* \*

(b) \* \* \*

(3) If you are a refiller of a pesticide product and you are not a registrant of the pesticide product, § 165.45(a)(2) provides an exemption from some of the requirements in § 165.45(a)(1).

(c) *When do I have to comply?* As of August 16, 2011, any pesticide product packaged in a refillable container and released for shipment by you must be packaged in a refillable container that complies with the regulations of this subpart.

15. Amend § 165.43 by revising the introductory text of paragraphs (c) and (d), the heading of paragraph (e), the introductory text of paragraph (e)(1), and

by revising paragraphs (f) and (g) to read as follows:

**§ 165.43 Scope of pesticide products included.**

\* \* \* \* \*

(c) *Which antimicrobial pesticide products are not subject to the regulations in this subpart?* The regulations in this subpart do not apply to a pesticide product if it satisfies all of the following conditions:

\* \* \* \* \*

(d) *Which requirements must an antimicrobial swimming pool product comply with if it is not exempt from these regulations?* An antimicrobial swimming pool product that is not exempt by paragraph (a), (b), or (c) of this section must comply with all of the regulations in this subpart except § 165.45(d) regarding marking and § 165.45(e) regarding openings. For the purposes of this subpart, an antimicrobial swimming pool product is a pesticide product that satisfies both of the following conditions:

\* \* \* \* \*

(e) *How will EPA determine if an antimicrobial pesticide product otherwise exempted must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment?* (1) EPA may determine that an antimicrobial pesticide product otherwise exempt by paragraph (c) of this section must be subject to the refillable container regulations in this subpart to prevent an unreasonable adverse effect on the environment if all of the following conditions exist:

\* \* \* \* \*

(f) *What other pesticide products are subject to the regulations in this subpart?* The regulations in this subpart apply to all pesticide products other than manufacturing use products, plant-incorporated protectants, and antimicrobial products that are exempt by paragraph (c) of this section. Antimicrobial products covered under paragraph (d) of this section are subject to the regulations indicated in that section.

(g) *What does "pesticide product" or "pesticide" mean in the rest of this subpart?* In § 165.43(h) through § 165.47, the term "pesticide product" or "pesticide" refers only to a pesticide product or a pesticide that is subject to the regulations in this subpart as described in paragraphs (a) through (f) of this section.

\* \* \* \* \*

16. Amend § 165.45 by revising paragraphs (a)(1) and (b), to read as follows:

**§ 165.45 Refillable container standards.**

(a) \* \* \*

(1) A pesticide product that does not meet the definition of a hazardous material in 49 CFR 171.8 must be packaged in a refillable container that, if portable, is designed, constructed, and marked to comply with the requirements of 49 CFR 173.4, 173.5, 173.6, 173.24, 173.24a, 173.24b, 173.28, 173.155, 173.203, 173.213, 173.240(c), 173.240(d), 173.241(c), 173.241(d), Part 178, and Part 180 that are applicable to a Packing Group III material, or, if subject to a special permit, according to the applicable requirements of 49 CFR part 107 subpart B. The requirements in this paragraph apply to the pesticide product as it is packaged for transportation in commerce.

\* \* \* \* \*

(b) *What DOT standards do my refillable containers have to meet under this part if my pesticide product is a DOT hazardous material?* (1) If your pesticide product meets the definition of a hazardous material in 49 CFR 171.8, the DOT requires your pesticide product to be packaged according to 49 CFR parts 171-180 or, if subject to a special permit, according to the applicable requirements of 49 CFR part 107 subpart B.

(2) For the purposes of these regulations, a pesticide product that meets the definition of a hazardous material in 49 CFR 171.8 must be packaged in a refillable container that, if portable, is designed, constructed, and marked to comply with the requirements of 49 CFR parts 171-180 or, if subject to a special permit, according to the applicable requirements of part 107 subpart B. The requirements in this paragraph apply to the pesticide product as it is packaged for transportation in commerce.

\* \* \* \* \*

17. Amend § 165.60 by revising paragraph (c) to read as follows:

**§ 165.60 General provisions.**

\* \* \* \* \*

(c) *When do I have to comply?* As of August 16, 2011, any pesticide product repackaged into a refillable container and released for shipment by you must have been repackaged in compliance with the regulations of this subpart.

18. Amend § 165.63 by revising paragraph (d)(1) to read as follows:

**§ 165.63 Scope of pesticide products included.**

\* \* \* \* \*

(d) \* \* \* (1) An antimicrobial swimming pool product that is not exempt by paragraph (a), (b), or (c) of this section must comply with all of the



regulations in this subpart except for the following requirements:

Requirement	Requirement for registrants who distribute or sell directly in refillable containers	Requirement for refillers who are not registrants
Recordkeeping specific to each instance of repackaging	§ 165.65(i)(2)	§ 165.70(j)(2)
Container inspection: criteria regarding a serial number or other identifying code	§ 165.65(e)(2)	§ 165.70(f)(2)
Container inspection: criteria regarding one-way valve or tamper-evident device	§ 165.65(e)(3)	§ 165.70(f)(3)
Cleaning requirement: criteria regarding one-way valve or tamper-evident device	§ 165.65(f)(1)	§ 165.70(g)(1)
Cleaning if the one-way valve or tamper-evident device is not intact	§ 165.65(g)	§ 165.70(h)

\* \* \* \* \*

19. Amend § 165.65 by revising paragraph (i)(2)(iii) to read as follows:

**§ 165.65 Registrants who distribute or sell pesticide products in refillable containers.**

\* \* \* \* \*

(i) \* \* \*

(2) \* \* \*

(iii) The serial number or other identifying code of the refillable container.

20. Amend § 165.67 by revising paragraphs (b)(2)(ii) and (d) to read as follows:

**§ 165.67 Registrants who distribute or sell pesticide products to refillers for repackaging.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) The pesticide product is repackaged by a refilling establishment registered with EPA as required by § 167.20 of this chapter at the site of a user who intends to use or apply the product.

\* \* \* \* \*

(d) *When must I provide the written contract to the refiller?* If you allow a refiller to repackage your product as specified in paragraph (b) of this section you must provide the written contract referenced in paragraph (b)(3) of this section to the refiller before you distribute or sell the pesticide product to the refiller.

\* \* \* \* \*

21. Amend § 165.70 by revising paragraphs (b)(2)(ii), (e)(5)(i), and (j)(2)(iii) to read as follows:

**§ 165.70 Refillers who are not registrants.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) The pesticide product is repackaged by a refilling establishment registered with EPA as required by § 167.20 of this chapter at the site of a

user who intends to use or apply the product.

\* \* \* \* \*

(e) \* \* \*

(5) \* \* \*

(i) The written contract referenced in paragraph (b)(3) of this section from the pesticide product's registrant.

\* \* \* \* \*

(j) \* \* \*

(2) \* \* \*

(iii) The serial number or other identifying code of the refillable container.

22. Amend § 165.80 by revising paragraph (b)(1) to read as follows:

**§ 165.80 General provisions.**

\* \* \* \* \*

(b) \* \* \*

(1) Refilling establishments who repackage agricultural pesticides and whose principal business is retail sale (i.e., more than 50% of total annual revenue comes from retail operations).

\* \* \* \* \*

23. Amend § 165.85 by revising paragraphs (a)(3), (d) and (f)(3); and by adding paragraph (f)(4) to read as follows:

**§ 165.85 Design and capacity requirements for new structures.**

(a) \* \* \*

(3) The containment structure must be made of materials compatible with the pesticides stored. In this case, compatible means to withstand anticipated exposure to stored or transferred substances and still provide containment of those same or other substances within the containment area.

\* \* \* \* \*

(d) *For new stationary liquid pesticide containment, what are the specific design requirements?* You must either anchor or elevate each stationary liquid pesticide container protected by a new secondary containment unit to prevent

flotation in the event that the secondary containment unit fills with liquid.

\* \* \* \* \*

(f) \* \* \*

(3) The storage area for stationary containers of dry pesticides must include a floor that extends completely beneath the pallets or raised concrete platforms on which the stationary dry pesticide containers must be stored.

(4) The storage area for stationary containers of dry pesticides must be enclosed by a curb a minimum of 6 inches high that extends at least 2 feet beyond the perimeter of the container.

24. Amend § 165.87 by revising paragraphs (a)(3), (d) and (f)(3); and by adding paragraph (f)(4) to read as follows:

**§ 165.87 Design and capacity requirements for existing structures.**

(a) \* \* \*

(3) The containment structure must be made of materials compatible with the pesticides stored. In this case, compatible means to withstand anticipated exposure to stored or transferred substances and still provide containment of those same or other substances within the containment area.

\* \* \* \* \*

(d) *For existing stationary liquid pesticide containment, what are the specific design requirements?* You must either anchor or elevate each stationary liquid pesticide container protected by an existing secondary containment unit to prevent flotation in the event that the secondary containment unit fills with liquid.

\* \* \* \* \*

(f) \* \* \*

(3) The storage area for stationary containers of dry pesticides must include a floor that extends completely beneath the pallets or raised concrete platforms on which the stationary dry pesticide containers must be stored.

(4) The storage area for stationary containers of dry pesticides must be



enclosed by a curb a minimum of 6 inches high that extends at least 2 feet beyond the perimeter of the container.

25. Amend § 165.90 by revising paragraphs (a)(2), (b)(1), (b)(2), and (b)(3) to read as follows:

**§ 165.90 Operational, inspection and maintenance requirements for all new and existing containment structures.**

(a) \* \* \*

(2) Ensure that pesticide spills and leaks on or in any containment structure are collected and recovered in a manner that ensures protection of human health and the environment (including surface water and groundwater) and maximum practicable recovery of the pesticide spilled or leaked. Cleanup must occur no later than the end of the day on which pesticides have been spilled or leaked except in circumstances where a reasonable delay would significantly reduce the likelihood or severity of adverse effects to human health or the environment.

\* \* \* \* \*

(b) \* \* \*

(1) Inspect each stationary pesticide container and its appurtenances and each containment structure at least monthly during periods when pesticides are being stored or dispensed on the containment structure. Your inspection must look for visible signs of wetting, discoloration, blistering, bulging, corrosion, cracks or other signs of damage or leakage.

(2) Initiate repair to any areas showing visible signs of damage and seal any cracks and gaps in the containment structure or appurtenances with material compatible with the pesticide being stored or dispensed no later than the end of the day on which damage is noticed and complete repairs within a time frame that is reasonable, taking into account the availability of cleanup materials, trained staff, and equipment.

(3) Not store any additional pesticide on a containment structure if the structure fails to meet the requirements of this subpart until suitable repairs have been made.

26. Amend § 165.97 by revising paragraph (b)(1) to read as follows:

**§ 165.97 States with existing containment programs.**

\* \* \* \* \*

(b) \* \* \*

(1) The State must submit a letter and any supporting documentation to EPA. Supporting documentation must demonstrate that the State's program is providing environmental protection equivalent to or more protective than

that expected to be provided by the Federal regulations in this subpart.

\* \* \* \* \*

[FR Doc. E8-12843 Filed 6-10-08; 8:45 am]

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of Child Support Enforcement**

**45 CFR Parts 309 and 310**

**RIN 0970-AC32**

**Computerized Tribal IV-D Systems and Office Automation**

**AGENCY:** Office of Child Support Enforcement (OCSE), Administration for Children and Families, Department of Health and Human Services (HHS).

**ACTION:** Notice of proposed rule making (NPRM).

**SUMMARY:** This proposed rule would enable Tribes and Tribal organizations currently operating a comprehensive Tribal Child Support Enforcement program under Title IV-D of the Social Security Act (the Act) to apply for and receive direct Federal funding for the costs of automated data processing. This proposed rule addresses the Secretary's commitment to provide instructions and guidance to Tribes and Tribal organizations on requirements for applying for, and upon approval, securing Federal Financial Participation (FFP) in the costs of installing, operating, maintaining, and enhancing automated data processing systems.

**DATES:** Consideration will be given to written comments received by August 11, 2008.

**ADDRESSES:** Written comments should be submitted to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, SW., 4th Floor, Washington, DC 20447, Attention: Director, Division of Policy, Mail Stop: OCSE/DP.

A copy of this regulation may be downloaded from <http://www.regulations.gov>. You may also transmit written comments electronically via the Internet. To transmit comments electronically access <https://www.regulations.acf.hhs.gov> and follow the instructions provided. You may also submit comments by telefaxing to (202) 260-5980. This is not a toll-free number.

Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m. on the 4th floor of the

Department's offices at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Essey Workie, OCSE Division of Policy, (202) 401-9386. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m. Eastern Time.

**SUPPLEMENTARY INFORMATION:**

**Statutory Authority**

This notice of proposed rulemaking is published under the authority granted to the Secretary (the Secretary) of the Department of Health and Human Services (the Department) by section 1102 of the Social Security Act (the Act), 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, which may be necessary for the efficient administration of the Title IV-D program.

This proposed rule also is published in accordance with section 455(f) of the Act. Section 455(f) of the Act requires the Secretary to issue regulations governing grants to Tribes and Tribal organizations operating child support enforcement programs.

**Background**

Prior to enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA; Pub. L. 104-193), Title IV-D of the Act placed authority to administer the delivery of IV-D services solely with States. PRWORA authorized the Secretary to provide direct funding to Tribes and Tribal organizations to operate child support enforcement programs under Title IV-D and to promulgate implementing regulations.

On August 21, 2000 the Tribal Child Support Enforcement Program notice of proposed rulemaking (NPRM) was published in the **Federal Register** (65 FR 50800). In 1998, the Federal Office of Child Support Enforcement (the Office) conducted a series of six Nation-to-Nation consultations with Indian Tribes, Tribal organizations and other interested parties with the goal of obtaining Tribal input prior to publishing the NPRM. The consultations were designed to solicit Tribal input prior to drafting the Federal regulations. The government-to-government consultations were very useful in identifying key issues and evaluating policy options. The issues raised most frequently included Tribal sovereignty, jurisdiction, full faith and credit, access to automated Federal locate and enforcement processes and

automated systems, paternity establishment and funding.

While the Office was familiar with the functionality contained in State systems and the degree of sophistication of those systems, it had no similar experience with the need for or availability of automation at the Tribal level. We received numerous comments on the NRPM indicating that automation was necessary and that without automation, it would be impossible for Tribes to accurately and efficiently process child support collections and that the costs for development of automated programs should be allowable for Federal Financial Participation (FFP) for Tribal IV-D programs. While we agree that automated data processing systems are helpful for recordkeeping, monitoring and high speed processing in child support enforcement cases, the final rule allows FFP only for limited automated systems and Office Automation expenditures. See 45 CFR 309.145(h). We stated in our response to comments to the final rule (65 FR at 16652) that we had begun consideration with stakeholders of appropriate minimum Tribal systems automation specifications in anticipation of Tribal IV-D programs moving toward high-speed automated data processing. A Federal/Tribal workgroup was convened and considered such automation issues as compatibility, scale, functionality and costs, with a goal of developing a Model Tribal System, designed by the Office to allow comprehensive Tribal IV-D agencies to effectively and efficiently automate Tribal child support enforcement operations.

This proposed rule sets forth requirements for comprehensive Tribal IV-D programs that must be met in order for Tribes and Tribal organizations to receive direct funding under section 455(f) of the Act for automated data processing systems.

#### Scope of Rulemaking

Current regulations at 45 CFR part 309 establish the requirements that Tribes and Tribal organizations must meet to demonstrate the capacity to operate a child support enforcement program which meets the objectives of section 455(f) of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents.

We propose to amend the Federal child support regulations at 45 CFR Part 310, Comprehensive Tribal Child Support Enforcement (CSE) Programs which are obsolete, to address Computerized Tribal IV-D Systems and Office Automation. As proposed, 45

CFR Part 310 would establish a basic regulatory structure for installation, operation, maintenance, and enhancement of Computerized Tribal IV-D Systems and Office Automation. This NPRM also proposes to revise § 309.145(h) which governs allowable costs for automated data processing computer systems and Office Automation associated with the Tribal IV-D program. This NPRM applies only to Tribes and Tribal organizations that operate comprehensive CSE programs under § 309.65(a); this NPRM does not apply to Tribal CSE programs that are currently in the start-up phase of development.

#### Discussion of Regulatory Provisions

The following is a discussion of all the regulatory provisions included in this NPRM. The discussion follows the order of regulatory text, addressing each subpart and section in turn.

##### *Part 309—Tribal Child Support Enforcement (IV-D) Program*

Section 309.145 What costs are allowable for Tribal IV-D programs carried out under § 309.65(a) of this Part?

Currently, § 309.145(h) addresses authorized, limited costs related to Tribal IV-D programs' automation. We propose to amend § 309.145(h) to expand allowable activities and costs incurred by comprehensive Tribal IV-D programs to include the installation, operation, maintenance and enhancement of Model Tribal Systems and Office Automation.

Proposed paragraph (h)(1) is almost identical to the language in current paragraph (h)(1) under which Federal funding at the applicable matching rate under § 309.130(c) is available for the costs of planning efforts in the identification, evaluation, and selection of an automated data processing computer system solution meeting the program requirements defined in a Tribal IV-D plan and the automated systems requirements in Part 310. The applicable matching rate as defined in § 309.130(c) would be ninety percent for comprehensive Tribal IV-D programs that are operating within the first three-year period of Federal funding; the applicable matching rate for comprehensive Tribal IV-D programs operating in all periods following the first three-year period would be eighty percent.) We have only added a reference to the proposed Part 310 which addresses automated systems requirements.

Paragraph (h)(2) would allow FFP for costs of installation, operation,

maintenance, and enhancement of a Model Tribal System as defined in and meeting the requirements of Part 310. The Model Tribal System was developed by the Office in collaboration with comprehensive Tribal IV-D programs to encompass those aspects of the Tribal child support program administration and case processing for which automation is deemed to be essential. Paragraph (h)(2) would authorize FFP for costs related to Model Systems installed by Tribal IV-D systems. Current paragraph (h) does not address funding for costs associated with the Model Tribal System. We discuss the Model Tribal System concept and requirements in detail under the explanation of Part 310. The decision to develop a Model Tribal System was based on the need for a cost-effective, efficient means of delivering automation to greatest number of Tribal IV-D programs in the most timely manner possible.

Proposed paragraph (h)(3) is identical to current paragraph (h)(3) under which FFP is available for the costs associated with procurement, installation, operation and maintenance of essential Office Automation capability.

Paragraph (h)(4) is almost identical to the current paragraph (h)(4) except for the addition of reference to Reasonable Costs at the end of the paragraph. The term Reasonable Cost is addressed later in this preamble and would mean a cost that, in nature and amount, does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. Therefore, under proposed paragraph (h)(4), FFP would be available for costs associated with the establishment of Intergovernmental Service Agreements with a State and another comprehensive Tribal IV-D agency for access to the State or other Tribe's existing automated data processing computer system to support Tribal IV-D program operations, and Reasonable Costs associated with use of such a system. The decision provides Tribal IV-D programs greater flexibility in their acquisition of automation to support their administrative and case processing requirements.

We have added a new paragraph (h)(5) that would allow FFP in the costs of operation and maintenance of an existing Tribal automated data processing system designed, developed, installed or enhanced entirely with Tribal funds if the software ownership rights and license requirements in proposed § 310.25(c) are met. As proposed under Part 310, comprehensive Tribal IV-D programs

are free to develop automated systems entirely funded by the Tribe. Under proposed paragraph (h)(5), we would allow FFP for operation and maintenance costs of such systems under one condition: The Tribe or Tribal organization must have the software ownership rights and must meet license requirements in proposed § 310.25(c). This condition is necessary because proprietary software, when purchased from vendors, typically remains the sole possession of the vendor. Any modifications or upgrades that are necessitated by changes in regulation or statute would require a financial outlay if the program were only leasing the software. It is important that a Tribal IV-D program be in a position to make changes to software without the need for going through a vendor, and that any such software, funded in whole or part with FFP, be freely available to the Federal government to use and authorize others to use for government purposes.

Existing paragraph (h)(5) would be renumbered (h)(6) and FFP would continue to be authorized for the costs of other automation and automated data processing computer system costs in accordance with instructions and guidance issued by the Secretary.

#### *Part 310—Computerized Tribal IV-D Systems and Office Automation*

The proposed regulation revises Part 310 to address the specific requirements for comprehensive Tribal IV-D program automated systems. The Part begins with a Table of Contents and consists of the following subparts:

- Subpart A—General Provisions
- Subpart B—Requirements for Computerized Tribal IV-D Systems and Office Automation
- Subpart C—Funding for Computerized Tribal IV-D Systems and Office Automation
- Subpart D—Accountability and Monitoring of Computerized Tribal IV-D Systems

##### *Subpart A—General Provisions*

Section 310.0 What does this Part cover?

This section summarizes the conditions for Federal funding of and requirements governing Computerized Tribal IV-D Systems and Office Automation. These include the automated systems options for comprehensive Tribal IV-D programs; the functional requirements for the Model Tribal Systems; the security and privacy requirements for Computerized Tribal IV-D Systems and Office Automation; the conditions for funding

the installation, operation, maintenance, and enhancement of Computerized Tribal IV-D Systems and Office Automation; the conditions that apply to acquisitions of Computerized Tribal IV-D Systems; and the accountability and monitoring of Computerized Tribal IV-D Systems.

Section 310.1 What definitions apply to this Part?

Paragraph (a) of this section of the proposed rule includes definitions of terms used in Part 310. In drafting this section, we have defined those terms used in the proposed rule that must be understood consistently by all who use these rules.

The first definition in this proposed rule is *Automated Data Processing Services (ADP Services)* which means services for installation, maintenance, operation, and enhancement of ADP equipment and software performed by a comprehensive Tribal IV-D agency or for that agency through a Service Agreement or other contractual relationship with a State, another Tribe or private sector entity. This definition is derived from 45 CFR 95.605 where requirements for FFP in the costs of Automatic Data Processing Equipment and services are addressed. The definition for the term *ADP Services* is essential to the proposed Part 310 because it modifies the definition provided in 45 CFR 95.605 to include comprehensive Tribal IV-D programs as eligible to perform or receive such *ADP services*.

*Comprehensive Tribal IV-D agency* is the second definition in the proposed rule. *Comprehensive Tribal IV-D agency* means the organizational unit in the Tribe or Tribal organization that has the authority for administering or supervising a comprehensive Tribal IV-D program under section 455(f) of the Act and implementing regulations in Part 309. This is an agency meeting all requirements of § 309.65(a) which is not in the start-up phase under § 309.65(b). This definition is derived from § 309.05 which provides definitions relating to the Tribal Child Support Enforcement program, such as the phrase *Tribal IV-D agency*. The term *Comprehensive* was added to the phrase *Tribal IV-D agency* to further define those Tribal IV-D agencies that operate a IV-D program that meets all the requirements in § 309.65(a). The development of automated systems is not an authorized activity for start-up grantees.

*Computerized Tribal IV-D System*, the third definition in this proposed rule, means a comprehensive Tribal IV-D program's system of data processing that is performed by electronic or electrical

machines so interconnected and interacting as to minimize the need for human assistance or intervention. A Computerized Tribal IV-D System would be:

- (i) The Model Tribal System; or
- (ii) Access to and use of a State or another comprehensive Tribal IV-D agency's existing automated data processing computer system through an Intergovernmental Service Agreement, as allowable under this proposed rule.

By definition, the term *Computerized Tribal IV-D System* would be limited to the above two system designs and would not include any alternative system of Automatic Data Processing. We determined that the term *Computerized Tribal IV-D System* would include only the Model Tribal System or access to an existing IV-D automated data processing computer system based on historical experience with the high cost and complexity of the development of multiple State systems and the challenges that emerge from operating systems with divergent designs.

The Model Tribal System, defined and discussed later in this preamble, was designed to meet the expressed needs of comprehensive Tribal IV-D agencies in the most effective and cost efficient manner. In developing the Model Tribal System, the Office consulted with comprehensive Tribal IV-D agencies and other governmental stakeholders to determine appropriate minimum systems specifications that would facilitate high-speed automated data processing capabilities in comprehensive Tribal IV-D operations. The Model Tribal System is the basis for a computerized Tribal automated data processing system, but comprehensive Tribal IV-D agencies may enhance the Model Tribal System to meet program-specific needs. Enhancement of the Model Tribal System is discussed later in this preamble.

Since some comprehensive Tribal IV-D programs have been successfully using State systems, the definition of *Computerized Tribal IV-D Systems* would include access to an automated data processing computer system through an Intergovernmental Service Agreement with a State or another comprehensive Tribal IV-D agency. Comprehensive Tribal IV-D agencies that have been successfully using a State system may continue to do so under an Intergovernmental Service Agreement. Tribal IV-D agencies that have never used another State or comprehensive Tribal IV-D agency's system may enter into an Intergovernmental Service Agreement authorizing access to that State or comprehensive Tribal IV-D

agency's automated data processing system.

The fourth definition in this proposed rule is *Installation*, which means the act of putting into service ADP equipment and software, performing data conversion, conducting training, and turnover to operation status. This definition is derived from 45 CFR 95.605, which addresses the requirements for FFP in the costs of Automatic Data Processing Equipment and services, and has been revised to be applicable to this proposed rule. This definition of *Installation* is relevant because of the need to further clarify those activities, as described herein, that encompass *installation* for purposes of this regulation.

The fifth definition in this proposed rule is *Maintenance*, which means the totality of activities required to provide cost-effective support to an operational ADP system. Maintenance is generally routine in nature and can include activities such as: Upgrading ADP hardware, revising/creating new reports, making limited data element/database changes, minor data presentation changes, and other software corrections. Because maintenance is an allowable cost, the definition is necessary. This definition is derived from and is consistent with policy guidance provided by the Office to States in Action Transmittal 06-03, which is dated August 11, 2006, and entitled *Policy Clarifications Relating to Planning, Design, Development, Installation, and Operation of Automated Systems in the Title IV-D Child Support Enforcement Program* (available at <http://www.acf.hhs.gov/programs/cse/pol/AT/2006/at-06-03.htm>).

*Model Tribal System*, the sixth definition in this proposed rule, means an ADP system designed and developed by the Office for comprehensive Tribal IV-D programs, to include system specifications and requirements as specified in Part 310. The Model Tribal System effectively and efficiently allows a comprehensive Tribal IV-D agency to monitor, account for, and control all child support enforcement services and activities pursuant to Part 309. This definition is derived from stakeholder input solicited by the Office on the matter of systems configuration for comprehensive Tribal IV-D programs.

*Office Automation*, which is the seventh definition in this proposed rule, means a generic adjunct component of a computer system that supports the routine administrative functions in an organization (e.g., electronic mail, word processing, Internet access), as well as similar functions performed as part of

an automated data processing system. Office Automation is not specifically designed to meet the programmatic and business needs of an organization. The term *Office Automation* is an industry-standard nomenclature, and though Office Automation is similar to an automated data processing system, in that it contains multiple components (e.g., operating system software, hardware, and networking), it is not an ADP system. This definition of *Office Automation* is taken from OCSE Action Transmittal 05-02, *Systems and Financial Policy Questions and Responses to Miscellaneous Issues regarding Provision of 45 CFR Part 309, the Tribal Child Support Enforcement Program Final Rule* (available at <http://www.acf.hhs.gov/programs/cse/pol/AT/2005/at-05-02.htm>).

*Reasonable Cost*, the eighth definition in this proposed rule, means a cost that, in nature and amount, does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining reasonableness with regard to ADP systems cost, consideration would be given to:

- (i) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of a comprehensive Tribal IV-D agency;
- (ii) The restraints or requirements imposed by such factors as: sound business practices; arms-length bargaining; Federal and Tribal laws and regulations; and terms and conditions of any direct federal funding;
- (iii) Whether the individual concerned acted with prudence in the circumstances considering his or her responsibilities to the comprehensive Tribal IV-D agency, its employees, the public at large, and the Federal Government;
- (iv) Market prices for comparable goods or services;
- (v) Significant deviations from the established practices of the comprehensive Tribal IV-D agency which may unjustifiably increase the cost; and
- (vi) Whether a project's Total Acquisition Cost as defined in § 95.605 is in excess of the comprehensive Tribal IV-D agency's total Tribal IV-D program grant award for the year in which the request is made.

The Office has a fiduciary responsibility to ensure that the costs associated with Computerized Tribal IV-D Systems are reasonable and necessary. This definition of Reasonable Cost is derived from OMB Circular A-87 and the Office's historical analysis and experience with automation efforts

in State IV-D programs. That analysis and experience recognizes that installation of either of the two options eligible for FFP that are available to Tribes under these regulations, namely the use of the Model Tribal System or the use of another State or Tribal IV-D agency's existing automated data processing computer system through an Intergovernmental Service Agreement, should not reasonably exceed a comprehensive Tribal IV-D agency's total Tribal IV-D program grant award for the year in which the request is made.

The ninth definition of this proposed rule is *Service Agreement*, which means a document signed by the Tribe or Tribal organization operating a comprehensive Tribal IV-D program under § 309.65(a) and the State or other comprehensive Tribal IV-D program whenever the latter provides data processing services to the former and identifies those ADP services that the State or other comprehensive Tribal IV-D program will provide to the Tribe or Tribal organization. Additionally, a Service Agreement as defined in this proposed rule would include the following details:

- Schedule of charges for each identified ADP service and a certification that these charges apply equally to all users;
- Description of the method(s) of accounting for the services rendered under the agreement and computing services charges;
- Assurances that services provided will be timely and satisfactory;
- Assurances that information in the computer system as well as access, use and disposal of ADP data will be safeguarded in accordance with proposed § 310.15;
- Beginning and ending dates of the period of time covered by the Service Agreement; and
- Schedule of expected total charges for the period of the Service Agreement.

This definition is taken from 45 CFR 95.605 and is revised to specifically apply to the needs of comprehensive Tribal IV-D programs. The definition of a *Service Agreement* is a critical component of this proposed rule, as it represents one of the two options for a Computerized Tribal IV-D System.

The tenth definition of this proposed rule is *Simplified Acquisition Threshold*, which for ADP systems, equipment, and service acquisitions means a Tribe or Tribal organization's monetary threshold for determining whether competitive acquisition rules are required for a given procurement or \$100,000, whichever is less. The term *Simplified Acquisition Threshold* is

used in 45 CFR 92.36(d), which references *small purchase procedures* as a procurement method for securing items of cost not exceeding the Simplified Acquisition Threshold fixed at 41 U.S.C. 403(11) (currently \$100,000). This is appropriately adapted for this rule because of the need to ensure full and open competition in acquisitions in accordance with 45 CFR 92.36(c), and to ensure consistency with regulations at 45 CFR 95.611(b) governing State ADP acquisitions funded at enhanced FFP rates of reimbursement.

Under proposed paragraph (b) of § 310.1, the following terms apply to Part 310 and are defined in 45 CFR 95.605: Acquisition; Advanced Planning Document (APD); Automatic Data Processing (ADP); Design or System Design; Development; Enhancement; Federal Financial Participation (FFP); Operation; Project; Software; and Total Acquisition Cost. Not all sections of Part 95 are applicable to Tribal IV–D programs. These terms are the terms in Part 95 that are appropriately applicable to Tribal IV–D programs. The above terms are relevant to the content of this proposed rule because in applying these definitions from 45 CFR 95.605, a reasonably consistent approach will be maintained among State, Local and Tribal grantees with regard to ADP systems acquisitions, while still maintaining flexibility for Tribes and Tribal organizations to determine their own best solution to automating their comprehensive Tribal IV–D program. We intend to issue a technical assistance document that contains all relevant systems requirements and definitions to ensure Tribal programs have in one document all relevant definitions.

Paragraph (c) of § 310.1 of the proposed rule cross-references all definitions of terms that apply to Tribal IV–D programs as detailed in § 309.05 because these terms are also applicable in Part 310. These definitions would also be included in our technical assistance document as mentioned above.

#### *Subpart B—Requirements for Computerized Tribal IV–D Systems and Office Automation*

**Section 310.5** What options are available for Computerized Tribal IV–D Systems and Office Automation?

This section of the proposed rule sets forth options available to comprehensive Tribal IV–D agencies for the purpose of automating Tribal IV–D activities. We recognize the importance and benefits of integrating automation

in the daily operations of comprehensive Tribal IV–D programs. To that end, proposed paragraph (a) of this section allows a comprehensive Tribal IV–D agency to have in effect an operational computerized support enforcement system that meets Federal requirements under Part 310.

Paragraph (b) of this section proposes that a Computerized Tribal IV–D System must be one of the design options discussed below. Under paragraph (b)(1), a comprehensive Tribal IV–D program may automate its case processing and record-keeping processes through installation, operation, maintenance, or enhancement of the Model Tribal System designed by the Office to address the program requirements defined in a Tribal IV–D plan in accordance with § 309.65(a) and the functional requirements in proposed § 310.10. As discussed earlier in the preamble, we propose automation of comprehensive Tribal IV–D activities through the Model Tribal System based on recommendations of a workgroup consisting of Federal and Tribal program representatives that considered factors such as scale, functionality, cost, and compatibility with State systems, in the development of the Model Tribal System. Participants in the various meetings included representatives from each of the nine comprehensive Tribal IV–D agencies. The system specifications and minimum essential functions of the Model Tribal System correspond with the feedback we received from comprehensive Tribal IV–D programs and other governmental stakeholders.

Under paragraph (b)(2), we propose that a comprehensive Tribal IV–D program may elect to automate its case processing and record-keeping processes through the establishment of Intergovernmental Service Agreements with a State or another comprehensive Tribal IV–D agency for access to that agency's existing automated data processing computer system to support comprehensive Tribal IV–D program operations.

A Computerized Tribal IV–D System implemented under a Service Agreement as defined in proposed § 310.1 would be in line with the existing allowable activities permitted in § 309.145(h)(4). We recognize that some comprehensive Tribal IV–D programs have been successfully using State systems prior to this proposed rule and we consider it important to allow continuation of those efforts, as well as establishment of similar Intergovernmental Service Agreements by comprehensive Tribal IV–D programs

that do not currently access another State or comprehensive Tribal IV–D agency's existing automated data processing computer system. In addition, this option of automating comprehensive Tribal IV–D activities through the establishment of Intergovernmental agreements provides for the flexibility recommended by workgroup participants.

In proposed paragraph (c) of this section, a comprehensive Tribal IV–D agency may opt to conduct automated data processing and recordkeeping activities through Office Automation. Allowable activities under this section include procurement, installation, operation and maintenance of essential Office Automation capability as defined in § 310.1. We deem it important to offer Office Automation as an alternative or in addition to Computerized Tribal IV–D Systems, as defined in paragraph (b) above, to ensure that comprehensive Tribal IV–D programs have the flexibility to operate at the level of automation that best suits their particular needs. Office Automation may include the word processing capabilities needed to produce summonses and petitions. Office Automation may also describe the creation of certain reports or accounting spreadsheets that serve to streamline an otherwise wholly manual business function through the use of macros to merge data and text into a usable management productivity tool. Office Automation components may include some or all of the following elements: Personal computers and workstations; networking and application servers; telecommunications and network wiring to connect the computers in a unified network environment; Network Operating System (NOS) and workstation and personal computer operating system software, such as Microsoft Windows XP® or Red Hat Linux®; office productivity software, such as Microsoft Office®, Microsoft Project® or WordPerfect®; and electronic mail and Internet access services, such as T–1, DSL, or 56K dial-up (e.g., AOL® and EarthLink®).

In full recognition of Tribal sovereignty, proposed paragraph (d) of § 310.5 affirms that a comprehensive Tribal IV–D agency may design, develop, procure, or enhance an automated data processing system funded entirely with Tribal funds. An automated data processing system funded entirely with Tribal funds would not be obligated to meet the requirements detailed in this proposed rule, although a comprehensive Tribal IV–D agency may determine to adopt all or some of the system specifications

laid-out in this proposed rule in order to facilitate as much consistency in State and comprehensive Tribal IV-D automated data processing systems as possible.

**Section 310.10** What are the functional requirements for the Model Tribal IV-D system?

In this proposed section, we identify the minimum functional requirements which a comprehensive Tribal IV-D agency must meet in the operation of a Model Tribal IV-D System. Comprehensive Tribal IV-D agencies that have elected to automate case processing and record-keeping activities through a manner other than the Model Tribal System, as defined in § 310.1 of this Part, would not be subject to the requirements presented in this section of the proposed rule.

The system requirements discussed in this proposed section are based on the functional requirements for computerized support enforcement systems regulated in §§ 307.10 and 307.11 for State IV-D programs. Determination of which proposed functional requirements should be mandatory in a Model Tribal IV-D system is based on careful examination of State automated systems, Tribal IV-D program regulations, and cost-effectiveness analyses, as well as strong consideration of which comprehensive Tribal IV-D activities would benefit most from automation, given the varying sizes of eligible Tribes and Tribal organizations. Additionally, the proposed functional requirements specified in this section reflect deference for Tribal Sovereignty.

Paragraph (a) of § 310.10 proposes that a Model Tribal IV-D system must accept, maintain and process the actions in the child support collection and paternity determination processes under the Tribal IV-D plan, including the following:

- (1) *Identifying information* such as Social Security numbers, names, dates of birth, home addresses and mailing addresses (including postal zip codes) on individuals against whom paternity and support obligations are sought to be established or enforced and on individuals to whom support obligations are owed, and other data as required by the Office;

- (2) *Verifying information* on individuals referred to in § 310.10(a)(1) with Tribal, Federal, State and local agencies, both intra-tribal and intergovernmental;

- (3) *Maintaining information* pertaining to applications and referrals for Tribal IV-D services (including case records, referrals to the appropriate

processing unit such as locate or paternity establishment units, caseworker notifications, Case Identification Numbers; and Participant Identification Numbers), delinquency and enforcement activities, intra-tribal, intergovernmental, and Federal location of the putative father and noncustodial parents, the establishment of paternity, the establishment of support obligations, and the payment and status of current support obligations and arrearage accounts; and

- (4) *Maintaining data* on case actions administered by both the initiating and responding jurisdictions in intergovernmental cases.

The actions described above are essential elements of automated case processing which are necessary to meet the fundamental objectives of the Tribal Child Support Enforcement program, including establishing paternity, establishing and enforcing support orders, and collecting child support payments.

Under paragraph (b), we propose that a Model Tribal IV-D system must update, maintain and manage all IV-D cases under the Tribal IV-D plan from initial application or referral through collection and enforcement including any events, transactions, or actions taken therein. This requirement is especially critical in relation to proposed Subpart D, § 310.40 which addresses accountability and monitoring procedures for Computerized Tribal IV-D Systems.

We propose under paragraph (c) of this section to require a Model Tribal IV-D system to record and report any fees collected, either directly or by interfacing with State or Tribal financial management and expenditure information. The Model Tribal IV-D system, as proposed in this section, must have the capacity to record and report costs of any fees collected to help ensure accurate and complete accounting of expenditures under a Tribal IV-D program that are funded in part with Federal funds.

Proposed paragraph (d) of this section requires that a Model Tribal IV-D system must have minimum system specifications which allow for the distribution of current support and arrearage collections in accordance with Federal regulations at § 309.115 and Tribal laws. We consider distribution of collected child support payments to be one of the comprehensive Tribal IV-D activities that would benefit most from automation. Automated distribution of collections would ensure families receive the support owed to them and minimize the need for manual processing of child support payments,

which can be a time-consuming and burdensome task for comprehensive Tribal IV-D programs. Additionally, automated distribution of collections would facilitate more efficient and cost-effective communications in intra-tribal and intergovernmental case processing.

In paragraph (e)(1) we propose that the Model Tribal IV-D system must maintain, process and monitor accounts receivable on all amounts owed, collected, and distributed with regard to detailed payment histories that include the amount of each payment, date of each collection, method of payment, distribution of payments and date of each disbursement. Under proposed paragraph (e)(2), the Model Tribal IV-D system must have the capacity to perform automated income withholding activities such as recording and maintaining any date the noncustodial parent defaults on payment of the support obligation in an amount equal to the support payable for one month, generating the Standard Federal Income Withholding Form and allocating amounts received by income withholding according to §§ 309.110 and 309.115, which respectively cover procedures governing income withholding and distribution of child support collections as specified in each Tribal IV-D plan. These proposed functional requirements would provide comprehensive Tribal IV-D agencies with an accurate and complete record of all accounts receivable and income withholding activities concerning amounts owed, collected, and distributed in connection with child support payments.

Proposed paragraph (f) of § 310.10 requires that a Model Tribal IV-D system maintain and automatically generate data necessary to meet Federal reporting requirements on a timely basis as prescribed by the Office. At a minimum this would include (1) yearly notices on support collected, which are itemized by month of collection and provided to families receiving services under the comprehensive Tribal IV-D program as required in § 309.75(c), to all case participants regarding support collections; and (2) reports submitted to the Office for program monitoring and program performance as required in § 309.170. Without the proposed Model Tribal IV-D system, comprehensive Tribal IV-D agencies would rely on manual systems or Office Automation to manage the Federal reporting requirements and payment records which require meticulous attention to detail. Reliance on manual accounting systems risks human error that can harm families and jeopardize Federal funding. This proposed functional requirement is

in response to comments reported in the Final Rule of the Tribal Child Support Enforcement Program published on March 30, 2004 (69 FR 16638), which indicated that Tribes and Tribal organizations would benefit from a sophisticated computer system to track individual accounts and provide required notices of child support collections to families served by the IV-D program.

Under paragraph (g) of this section, we propose that a Model Tribal IV-D system be required to provide automated processes to enable the Office to monitor Tribal IV-D program operations and to assess program performance through the audit of financial and statistical data maintained by the system. This requirement is especially critical in relation to proposed Subpart D, § 310.40 which addresses accountability and monitoring procedures for Computerized Tribal IV-D Systems.

In proposed paragraph (h) of this section, the Model Tribal IV-D system must provide security to prevent unauthorized access to, or use of, the data in the system as detailed in proposed § 310.15 discussed below. This requirement is necessary because comprehensive Tribal IV-D agencies may receive sensitive, personal information from Federal, State, or Tribal locate sources in inter-governmental cases or from parents seeking the Tribal IV-D program's assistance in securing support for children. In the current age of identity theft, electronic record keeping and concerns for personal privacy, Federal, State and Tribal programs are entrusted with personal information critical to accomplish the goals of those programs. It is imperative that governments safeguard personal data to ensure privacy and maintain the public trust. For the aforementioned reasons, the Model Tribal System must meet security and privacy requirements set forth in § 310.15. We also would emphasize that no Federal Tribal IV-D program requirement obligates comprehensive Tribal IV-D agencies to disclose, or otherwise make accessible, their Tribal enrollment records for the purposes of providing child support enforcement services or automating child support enforcement activities.

**Section 310.15** What are the safeguards and processes that comprehensive Tribal IV-D agencies must have in place to ensure the security and privacy of Computerized Tribal IV-D Systems and Office Automation?

This proposed section details the safeguarding requirements that a comprehensive Tribal IV-D agency, which is using a Computerized Tribal IV-D System or Office Automation, must have in place to ensure the security and confidentiality of information accessible through Federal, State, and Tribal sources. This section is taken from § 307.13 which addresses security and confidentiality for State computerized support enforcement systems and is revised to apply to automation for comprehensive Tribal IV-D programs.

Under paragraph (a) of this section, the comprehensive Tribal IV-D agency must safeguard the integrity, accuracy, completeness, access to, and use of data in the Computerized Tribal IV-D System and Office Automation. The Tribal IV-D agency should ensure that the Computerized Tribal IV-D Systems and Office Automation comply with the requirements of the Federal Information Security Management Act and the Privacy Act. These safeguards must include written policies and procedures concerning (1) periodic evaluations of the system for risk of security and privacy breaches; (2) procedures to allow Tribal IV-D personnel controlled access and use of IV-D data (including (i) specifying the data which may be used for particular IV-D program purposes and the personnel permitted access to such data as well as (ii) permitting access to and use of data for the purpose of exchanging information with State and Tribal agencies administering programs under titles IV-A, IV-E and XIX of the Act to the extent necessary to carry out the comprehensive Tribal IV-D agency's responsibilities with respect to such programs); (3) maintenance and control of application software program data; (4) mechanisms to back-up and otherwise protect hardware, software, documents, and other communications; and (5) mechanisms to report (to the Department of Homeland Security) and respond to breaches of personally identifiable information. We recognize the child support enforcement community has a duty to protect the information accessible through IV-D resources. Consequently, we deem the above safeguards to be invaluable strategies in ensuring the security of Computerized Tribal IV-D Systems,

Office Automation, the IV-D program as a whole and the personal data concerning the individuals we serve.

Paragraph (b) of this proposed section requires that the comprehensive Tribal IV-D agency monitor routine access to and use of the Computerized Tribal IV-D System and Office Automation through methods such as audit trails and feedback mechanisms to guard against, and promptly identify unauthorized access or use. This proposed safeguard is consistent with the security and privacy measures required in the State computerized support enforcement systems found in § 307.13 and is an appropriate aspect of information security.

We propose in paragraph (c) of this section that the comprehensive Tribal IV-D agency have procedures to ensure that all personnel, including Tribal IV-D staff and contractors, who may have access to or be required to use confidential program data in the Computerized Tribal IV-D System and Office Automation are adequately trained in security procedures. This proposed safeguard is consistent with the security and privacy measures required in the State computerized support enforcement systems in § 307.13 and is equally critical to Tribal automated systems. Staff members and contractors of comprehensive Tribal IV-D agencies using the Computerized Tribal IV-D System or Office Automation should demonstrate knowledge of strategies that would ensure the security and privacy of sensitive information to meet their responsibility to provide services and store information in the automated systems or Office Automation.

In paragraph (d) of this section, we propose that the comprehensive Tribal IV-D agency have administrative penalties, including dismissal from employment, for unauthorized access to, disclosure or use of confidential information. This aspect of the security and privacy safeguarding requirements reflects our position that security and privacy of child support enforcement-related information is paramount to the integrity of the system and as such must include administrative sanctions.

#### *Subpart C—Funding for Computerized Tribal IV-D Systems and Office Automation*

**Section 310.20** What are the conditions for funding the installation, operation, maintenance and enhancement of Computerized Tribal IV-D Systems and Office Automation?

This section of the proposed rule would establish conditions that must be



met in order for a comprehensive Tribal IV-D agency to obtain Federal funding in the costs of installation, operation, maintenance and enhancement of Computerized Tribal IV-D Systems and Office Automation. This section is derived from §§ 307.15 and 307.20, governing State automated systems, and is appropriately revised to specifically apply to the needs of comprehensive Tribal IV-D programs. Sections 307.15 and 307.20, respectively, address conditions for approval of Advance Planning Documents (APD) and submittal of APDs for State computerized support enforcement systems. Proposed § 310.20 addresses procedures for submittal of an APD to the Department. The Office uses the APD process to help meet its fiduciary responsibility to ensure that the costs associated with all ADP systems acquisitions, including Computerized Tribal IV-D Systems, are reasonable and necessary. Just as the Office requires States to request funding in an APD for acquisition of a computerized child support enforcement system, documenting such factors as project cost, risk, resources, and schedule, those same factors equally apply to the Office's review and approval of the installation, operation, maintenance and enhancement of Computerized Tribal IV-D Systems. For this reason, the APD process is incorporated to this proposed rule as applicable and necessary to acquisitions of such systems in comprehensive Tribal IV-D programs.

The proposed content of paragraph (a) provides instructions for preparing an APD, streamlines the APD application process, and distinguishes between activities that require an APD submission and those that only require submission of annual budgets in accordance with § 309.15(c). Proposed paragraph (a) lays out conditions that must be met for FFP in the costs of installation, operation, maintenance, and enhancement of a Computerized Tribal IV-D System at the applicable matching rate under § 309.130(c). (The applicable matching rate as defined in § 309.130(c) refers to the total amount of approved and allowable expenditures for which a comprehensive Tribal IV-D program would be eligible to receive Federal grant funds in the costs of administering the Tribal IV-D program, including Computerized Tribal IV-D Systems and Office Automation. The applicable matching rate would be ninety percent for comprehensive Tribal IV-D programs that are operating within the first three-year period of Federal funding; the applicable matching rate for comprehensive Tribal IV-D

programs operating in all periods following the first three-year period would be eighty percent.)

Paragraph (a)(1) would state that a comprehensive Tribal IV-D agency must have submitted, and the Office must have approved, an APD for the installation and enhancement of a Computerized Tribal IV-D System. Under paragraph (a)(2), an APD for installation of a Computerized Tribal IV-D System must (i) represent the sole systems effort being undertaken by the comprehensive Tribal IV-D agency under part 310; (ii) describe the projected resource requirements for staff, hardware, software, network connections and other needs and the resources available or expected to be available to meet the requirements; (iii) contain a proposed schedule of project milestones with detail sufficient to describe the tasks, activities, and complexity of the initial implementation project; (iv) contain a proposed budget including a description of expenditures by category and amount for items related to installing, operating, maintaining, and enhancing the Computerized Tribal IV-D System that are eligible for Federal funding at the applicable matching rate under § 309.130(c); and (v) contain a statement that the comprehensive Tribal IV-D agency agrees in writing to use the Computerized Tribal IV-D System for a minimum period of time. This last requirement, to agree in writing to use the Computerized Tribal IV-D System for a minimum period of time, is derived from 45 CFR 95.619. Under § 95.619, ADP systems designed, developed, or installed with FFP shall be used for a period of time specified in the advance planning document, unless the Department determines that a shorter period is justified. The requirement for the APD to contain an agreement by a Tribal IV-D program to use the Computerized Tribal IV-D System for a minimum period of time assures both the Federal and Tribal governments of a reasonable return on investment relative to the Total Acquisition Cost of the Computerized Tribal IV-D System.

In addition to the above requirements, proposed paragraph (a)(3) includes the following conditions which must be met to obtain FFP in the installation costs of access to a State or another comprehensive Tribal IV-D program's ADP system established under an Intergovernmental Service Agreement: The comprehensive Tribal IV-D agency must (i) maintain a copy of each intergovernmental cooperative agreement and Service Agreement in its files for Federal review. Under

subparagraph (ii), the comprehensive Tribal IV-D agency must ensure that (A) the Service Agreement for which FFP is being sought meets the definition of a Service Agreement as defined in proposed § 310.1; (B) claims for FFP conform to the timely claim provisions of 45 CFR Part 95, Subpart A; and (C) the Service Agreement was not previously disapproved by the Department. In deriving from 45 CFR Part 95 Subpart A the requirements to be met to obtain FFP in the cost of access to another State or Tribal IV-D program's ADP system, we are ensuring a common understanding and consistency of approach to securing, documenting and maintaining FFP approval of such intergovernmental cooperative agreements. In addition to the requirements proposed above, under paragraph (a)(4), the following conditions must be met in order for a comprehensive Tribal IV-D agency to obtain FFP in the costs of enhancements to its Computerized Tribal IV-D System: (i) The project's Total Acquisition Cost cannot exceed the comprehensive Tribal IV-D agency's total Tribal IV-D program grant award for the year in which the acquisition request is made; and (ii) the APD budget, schedule and commitment to use the Computerized Tribal IV-D System for a specified minimum period of time must be updated to reflect the enhancement project. These additional APD requirements to obtain FFP in the cost of enhancements to an existing Computerized Tribal IV-D System reflect the need to ensure both continued cost reasonableness and ongoing return on investment given a Computerized Tribal IV-D System's increased Total Acquisition Cost.

Paragraph (a)(5) of § 310.20 proposes that to receive FFP in the costs of the operation and maintenance of a Computerized Tribal IV-D System installed under proposed § 310.20 or developed under proposed § 309.145(h)(5), which refers to a Tribal automated data processing system that is funded entirely with Tribal funds, the comprehensive Tribal IV-D agency must include operation and maintenance costs in its annual Title IV-D program budget submission in accordance with § 309.15(c) wherein requirements for annual budget submissions are detailed.

In addition, paragraph (a)(6) would require that in order to receive FFP in the costs of the installation, operation, and maintenance of essential Office Automation capabilities, the comprehensive Tribal IV-D agency must include such costs in its annual Title IV-D program budget submission in accordance with § 309.15(c). Currently, States maintaining their computerized



IV-D systems in an operations and maintenance-only mode may close their APD and thereafter request FFP for their operation and maintenance costs through specific line-item submissions in their "Quarterly Report of Expenditures and Estimates," (OCSE Form 396A). Given the efficacy of this existing procedure used with States, and the predictability and general reasonableness of such costs, a similar process for Tribes to request FFP for operation and maintenance cost reimbursement is appropriate. Therefore, this rule will allow Tribes to request FFP in the costs of installation, operation, and maintenance of essential Office Automation capabilities, an inherently operational activity, through a comprehensive Tribal IV-D agency's Title IV-D program budget submission, "Financial Status Report," (OCSE Form 296A) in accordance with requirements listed at § 309.15(c).

The graduated variation in conditions that must be met in order to obtain FFP in the costs of the activities under this proposed paragraph (a) are designed to reflect the varying automation levels of comprehensive Tribal IV-D agencies. For example, the conditions that a comprehensive Tribal IV-D agency would be required to meet in order to obtain FFP in the costs of installing Office Automation would be less involved than the conditions required for a comprehensive Tribal IV-D agency that is requesting FFP in the installation costs of accessing a State or another comprehensive Tribal IV-D program's APD system. Proposed § 310.20 provides comprehensive Tribal IV-D agencies with the flexibility to determine which automation approaches and application procedures best suit the program-specific needs of that Tribe or Tribal organization. The provisions in proposed paragraph (a) are consistent with Tribal IV-D program staff input to reduce the burden of the APD application process.

Provisions under § 310.20(b) would describe the required procedures for submittal of an APD. Proposed paragraph (b) states that the comprehensive Tribal IV-D agency must submit an APD for a Computerized Tribal IV-D System to the Commissioner of the Office, Attention: Division of State and Tribal Systems. The APD submitted by the comprehensive Tribal IV-D agency must be approved and signed by the comprehensive Tribal IV-D agency Director and the authorized representative of the Tribe or Tribal organization prior to submission to the Office for approval. The above procedures for submitting an APD

would ensure that the proper authorities representing the Tribe or Tribal organization agree with the details in the APD application documents and that the Program Director and appropriate Tribal officials are aware of responsibilities in acquiring automation for the Tribal IV-D program.

#### Section 310.25 What conditions apply to acquisitions of Computerized Tribal IV-D Systems?

This proposed section details specific conditions that must be met in the acquisition process of Computerized Tribal IV-D Systems. Comprehensive Tribal IV-D agencies that have elected to automate program activities through Office Automation or another alternative to Computerized Tribal IV-D Systems as discussed in proposed § 310.5, would not be subject to the requirements presented in proposed § 310.25. This section is derived from and comparable to § 307.31 and 45 CFR 95.617 which are respectively entitled *FFP at the 80 Percent Rate for Computerized [State] Support Enforcement Systems and Software and Ownership Rights*.

In proposed paragraph (a) of this section entitled *APD Approval*, a comprehensive Tribal IV-D agency must have an approved APD in accordance with the applicable requirements of proposed § 310.20. This paragraph (a) would establish protocol for when a comprehensive Tribal IV-D agency may engage in acquisition procedures in the purchase of a Computerized Tribal IV-D System. The requirement that a comprehensive Tribal IV-D agency must have an approved APD prior to initiating acquisition of a Computerized Tribal IV-D System safeguards all parties involved by ensuring that authorities from the Tribe or Tribal organization and the Department are in agreement about the use, funding, and parameters of each comprehensive Tribal IV-D agency's specific plan for automating case-processing and record-keeping program activities.

Under proposed paragraph (b), which is entitled *Procurements*, Requests for Proposals (RFP) and similar procurement documents, contracts, and contract amendments involving costs eligible for FFP, must be submitted to the Office for approval prior to release of the procurement document, and prior to the execution of the resultant contract when a procurement is anticipated to or will exceed the Simplified Acquisition Threshold. The Simplified Acquisition Threshold for ADP systems, equipment, and service acquisitions is defined in proposed § 310.1(a)(10) as a Tribe or Tribal organization's monetary

threshold for determining whether competitive acquisition rules are required for a given procurement or \$100,000, whichever is less. The Simplified Acquisition Threshold represents the maximum amount of monies that a comprehensive Tribal IV-D agency may expend without submitting the subject solicitation document (RFP, etc.) and resultant contract to the Office for review and written approval prior to its execution. As previously stated in the proposed rule, this threshold is derived from 45 CFR 92.36(d)(1), which references *small purchase procedures* as a procurement method for securing items of cost not exceeding the Simplified Acquisition Threshold fixed at 41 U.S.C. 403(11) (currently \$100,000). This is appropriately adapted for this rule because of the need to ensure full and open competition in acquisitions in accordance with 45 CFR 92.36(c), and to ensure consistency with regulations at 45 CFR 95.611(b) governing State ADP acquisitions funded at enhanced FFP rates of reimbursement.

Beyond just ensuring consistency with regulations governing State acquisitions funded at enhanced FFP rates, in proposing a Simplified Acquisition Threshold at \$100,000 or the threshold set by a Tribe or Tribal organization, whichever is less, we determined that such monies would meet the funding needs of the majority of comprehensive Tribal IV-D agencies which service moderate caseloads. Therefore, under this proposed paragraph (b), only those comprehensive Tribal IV-D agencies with significantly larger caseloads would likely be impacted by the requirement to submit RFP's and contracts to the Office for approval prior to their respective release or execution if they are anticipated to exceed the Simplified Acquisition Threshold.

Proposed paragraph (c)(1) is entitled *Software and Ownership Rights* and requires that all procurement and contract instruments must include a clause that provides that the comprehensive Tribal IV-D agency will have all ownership rights to Computerized Tribal IV-D System software or enhancements thereof and all associated documentation designed, developed, or installed with FFP. Intergovernmental Service Agreements are not subject to this requirement. This exception for Intergovernmental Service Agreements ensures consistent application of current policy among all grantees, State and Tribal, and is derived from current Federal regulations at 45 CFR 95.613(b) that exempt Service Agreements from the procurement

standards applicable to State acquisitions of ADP equipment and services. Additionally, proposed paragraph (c)(2), states that the Office reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications and documentation developed under this part. Under paragraph (c)(3) FFP would not be available for the costs of rental or purchase of proprietary application software developed specifically for a Computerized Tribal IV-D System. Commercial-off-the-shelf (COTS) software packages that are sold or leased to the general public at established catalog or market prices are not subject to the ownership and license provisions of this requirement. The requirements stated in this proposed paragraph (c) are not unique to Child Support Enforcement regulations. Rather, the proposed requirements would be a restatement of current Departmental regulations that have applied to all automated systems acquisitions, and not just those in the IV-D program. Federal policy in this area, as stated in Federal regulations at 45 CFR 92.34 and 95.617, and as restated in child support automation regulations for State IV-D programs at 45 CFR 307.30 and 45 CFR 307.31, is appropriate and best protects the Federal interest in IV-D and other Federal systems development efforts.

In proposed paragraph (d) of this section, a comprehensive Tribal IV-D agency is not required to submit procurement documents, contracts, and contract amendments for acquisitions under the Simplified Acquisition Threshold set by the Tribe or Tribal organization or \$100,000, whichever is less, unless specifically requested to do so in writing by the Office. The Office believes that procurement activities which fall under the Simplified Acquisition Threshold amount would not require submittal of procurement documents, contracts, and contract amendments because such acquisitions already fall under the existing procurement regulations of 45 CFR 92.36 (*Procurement*) and because applying such a threshold ensures a consistency of approach between State and Tribal grantees relative to procurements funded at enhanced rates of FFP.

**Section 310.30** Under what circumstances would FFP be suspended or disallowed in the costs of Computerized Tribal IV-D Systems?

This section of the proposed rule identifies circumstances under which

the Office would suspend or disallow FFP in the costs of Computerized Tribal IV-D Systems. This section does not apply to Office Automation enhancements or another alternative to Computerized Tribal IV-D Systems as discussed in proposed § 310.5. The proposed content of this section is derived from § 307.40 which is entitled *Suspension of Approval of Advance Planning Documents for Computerized Support Enforcement Systems* and addresses suspension and disallowance of FFP in the costs of State computerized child support enforcement systems.

Proposed paragraph (a) of this section entitled *Suspension of APD* approval states that the Office will suspend approval of the APD for a Computerized Tribal IV-D System approved under Part 310 as of the date that the system ceases to comply substantially with the criteria, requirements, and other provisions of the APD. The Office will notify a Tribal IV-D agency in writing of a notice of suspension, with such suspension effective as of the date on which there is no longer substantial compliance. The intent of the Office is to minimize the likelihood of suspension of a comprehensive Tribal IV-D agency's APD by engaging in supportive efforts such as technical assistance, policy guidance, and ongoing communication and collaboration between the comprehensive Tribal IV-D agency and the Office. The Office believes that such preventive efforts would likely facilitate early identification of difficulties associated with a Computerized Tribal IV-D System and the corresponding APD and thereby assist the Office and the comprehensive Tribal IV-D agency in taking appropriate corrective action, before more punitive measures, such as suspension of funding, become necessary.

Notwithstanding the above-stated intent, the Office deems it necessary to include provisions relating to suspension of an APD in this proposed paragraph (a) in order to clearly establish suspension as a possible consequence for a computerized Tribal IV-D support enforcement system that is substantially out of compliance with its APD.

Proposed paragraph (b) of this section entitled *Suspension of FFP* states that if the Office suspends approval of an APD in accordance with proposed Part 310 during the installation, operation, or enhancement of a Computerized Tribal IV-D System, FFP will not be available in any expenditure incurred under the APD after the date of the suspension until the date the Office determines that

the comprehensive Tribal IV-D agency has taken the actions specified in the notice of suspension described in paragraph (a). The Office will notify the comprehensive Tribal IV-D agency in writing upon making such a determination.

We proposed the above provision in paragraph (b) to ensure that Federal funding is managed and distributed in the most productive, efficient and cost-effective manner possible, and to ensure the Office has the means necessary to enforce its fiduciary responsibilities.

**Section 310.35** Under what circumstances would emergency FFP be available for Computerized Tribal IV-D Systems?

In this section we propose that emergency FFP in the costs of computerized Tribal IV-D support enforcement systems and Office Automation would be available for qualifying circumstances. This proposed section is similar to 45 CFR 95.624, which is entitled *Consideration for FFP in Emergency Situations* and which lays out procedures which must be followed in applying for emergency FFP. This proposed section has been appropriately revised from § 95.624 and made applicable to the specific needs of comprehensive Tribal IV-D programs.

Under proposed paragraph (a) of this section, which is entitled *Conditions that must be met for emergency FFP*, the Office will consider waiving the approval requirements for acquisitions in emergency situations, such as natural or man-made disasters, upon receipt of a written request from the comprehensive Tribal IV-D agency. In order for the Office to consider waiving the approval requirements in proposed § 310.25 the comprehensive Tribal IV-D agency must submit a written request to the Office prior to the acquisition of any ADP equipment or services. The written request must be sent by registered mail and include: (i) A brief description of the ADP equipment and/or services to be acquired and an estimate of their costs; (ii) a brief description of the circumstances which resulted in the comprehensive Tribal IV-D agency's need to proceed prior to obtaining approval from the Office; and (iii) a description of the harm that will be caused if the comprehensive Tribal IV-D agency does not acquire immediately the ADP equipment and services.

Under proposed paragraph (a)(2), upon receipt of the information, the Office will, within 14 working days of receipt, take one of the following actions: (i) Inform the comprehensive Tribal IV-D agency in writing that the request has been disapproved and the

reason for disapproval; or (ii) inform the comprehensive Tribal IV-D agency in writing that the Office recognizes that an emergency exists and that within 90 calendar days from the date of the initial written request under paragraph (a)(1) the comprehensive Tribal IV-D agency must submit a formal request for approval which includes the information specified at § 310.25 in order for the ADP equipment or services acquisition to be considered for the Office's approval.

Emergency FFP in the costs of Computerized Tribal IV-D Systems and Office Automation is included in this proposed rule in recognition of past natural and man-made disasters such as the 9/11 terrorist attacks and hurricanes Katrina and Rita, as well as unforeseeable emergency situations that may significantly impact comprehensive Tribal IV-D programs in the future. This authority has proven vital in the past, such as when use of such emergency authority permitted State grantees to procure necessary computer equipment and software to restore program services disrupted by hurricanes Katrina and Rita, and do so without the delay inherent in first submitting the procurement request for Federal review and prior approval. The proposed procedures which require a comprehensive Tribal IV-D agency to submit a written request to the Office and require the Office to take appropriate action within 14 working days ensure speedy and expedient management of child support resources during times of crisis.

Proposed paragraph (b) of this section states that if the Office approves the request submitted under paragraph (a)(2), FFP will be available from the date the comprehensive Tribal IV-D agency acquires the ADP equipment and services. In this section, proposed paragraph (b) would equip comprehensive Tribal IV-D agencies to respond to approved emergency situations with the assurance that the Office would provide added support to ensure continued operations of comprehensive Tribal IV-D program functions.

#### *Subpart D—Accountability and Monitoring Computerized Tribal IV-D Systems*

**Section 310.40** What requirements apply for accessing systems and records for monitoring Computerized Tribal IV-D Systems and Office Automation?

This proposed section identifies requirements that would facilitate accountability and monitoring procedures of Computerized Tribal IV-D Systems and Office Automation, including accessing systems and records. This section of the proposed rule is derived from 45 CFR 95.615 which is entitled *Access to Systems and Records* and addresses the Department's right to access State computerized support enforcement systems for the purposes of monitoring the conditions for approval, as well as the efficiency, economy and effectiveness of the State system.

In accordance with 45 CFR Part 95 of this title, under proposed § 310.40 a comprehensive Tribal IV-D agency must allow the Office access to the system in all of its aspects, including installation, operation, and cost records of contractors and subcontractors, and of Service Agreements at such intervals as are deemed necessary by the Office to determine whether the conditions for FFP approval are being met and to determine the efficiency, effectiveness, reasonableness of the system and its cost. As discussed in the justification for proposed § 310.30 of this proposed rule, on-going access to Computerized Tribal IV-D Systems and Office Automation records would enable the Office to facilitate early identification of difficulties associated with Tribal IV-D automation and to engage in supportive efforts such as technical assistance, policy guidance, and on-going communication and collaboration with comprehensive Tribal IV-D agencies. This technique of identifying and addressing system challenges early on has proven to be an effective management tool as evidenced by the Office's experience in monitoring State computerized support enforcement systems.

#### **Paperwork Reduction Act of 1995**

Under the Paperwork Reduction Act of 1995 (Pub. L. 104-13), all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. Interested parties may comment to OMB on these requirements as described below. This NPRM contains reporting requirements at proposed 45 CFR Part 310. The Department has submitted these reporting requirements to OMB for its review.

Proposed Part 310 contains a regulatory requirement that, in order to receive funding for a Computerized Tribal IV-D System, a Tribe or Tribal organization must submit an Advanced Planning Document (APD) which represents the sole systems effort being undertaken by the comprehensive IV-D agency; describes the projected resource requirements for staff, hardware, software, network connections and other needs and resources available and expected to be available; contains a proposed schedule of project milestones; contains a proposed budget; and contains a statement that the Tribal IV-D agency agrees in writing to use the Computerized Tribal IV-D System for a minimum period of time. Tribes and Tribal organizations must respond if they wish to operate a Federally-funded Computerized Tribal IV-D System. The potential respondents to these information collection requirements are approximately 40 Federally-recognized Tribes, and Tribal organizations, during Year 1; 5 additional Federally-recognized Tribes and Tribal organizations during Year 2; and 5 additional Federally-recognized Tribes and Tribal organizations during Year 3; for a three-year total of 50 grantees. This information collection requirement will impose the estimated total annual burden on the Tribes and Tribal organizations described in the table below:

Information collection	Number of respondents	Response per respondent	Average burden per response	Total annual burden
Year 1				
APD .....	40	2	108	8,640
Acquisitions (RFPs, Contracts, etc.) .....	6	2	24	288
Total .....				8,928

Information collection	Number of respondents	Response per respondent	Average burden per response	Total annual burden
Year 2				
APD .....	* 11	2	108	2,376
Acquisitions (RFPs, Contracts, etc.) .....	6	2	24	288
Total .....				2,664
Year 3				
APD .....	* 8	2	108	1,728
Acquisitions (RFPs, Contracts, etc.) .....	3	2	24	102
Total .....				1,848

\* Figures reflect APDs from 5 additional Tribes in Year 2 and Year 3 as well as APD Updates from Tribes included in Year 1 and 2 respectively.

*Total Burden for 3 Years: 13,440.*

*Total Annual Burden Averaged over 3 Years: 4,480 per year.*

The Administration for Children and Families will consider comments by the public on this proposed collection of information in the following areas:

- Evaluating whether the proposed collection is necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of ACF's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these regulations between 30 and 60 days after their publication in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, either by fax to 202-395-6974 or by e-mail to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Please mark faxes and e-mails to the attention of the desk officer for ACF.

#### Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), the Regulatory Flexibility Act (Pub. L. 96-354), that these regulations

will not result in a significant impact on a substantial number of small entities because the primary impact of these regulations is on Tribal governments. Tribal governments are not considered small entities under the Act.

#### Regulatory Impact Analysis

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. Moreover, we have consulted with the Office of Management and Budget (OMB) and determined that these rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were subject to OMB review.

We have determined that the proposed rule is not an economically significant rule and will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year. Therefore, we have not prepared a budgetary impact statement. We anticipate that the costs associated with this rule will be: FY 2009—\$8m; FY 2010—\$4m; FY 2011—\$2m; FY 2012—\$3m; FY 2013—\$3; FY 2013—\$3m.

The proposed regulations are authorized by 42 U.S.C. 655(f) and 42 U.S.C. 1302 and represent the proposed regulations governing direct funding for computerized systems and Office Automation of Tribal CSE agencies that demonstrate the capacity to operate a child support enforcement program, including establishment of paternity; establishment, modification and enforcement of support orders; and location of noncustodial parents.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in

the regulatory process. As described elsewhere in the preamble, ACF consulted with Tribes and Tribal organizations and their representatives to obtain their views prior to the publication of this NPRM.

#### Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (Unfunded Mandates Act), requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

As indicated above, we have determined this rule will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year.

#### Congressional Review

This proposed rule is not a major rule as defined in 5 U.S.C., Chapter 8.

#### Assessment of Federal Regulations and Policies on Family Well-Being

We certify that we have made an assessment of this rule's impact on the well-being of families, as required under Sec. 654 of the Treasury and General Appropriations Act of 1999. This proposed rule gives flexibility to Tribes and Tribal organizations to use technological advancements to meet program objectives that serve this purpose.

#### Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local

governments or is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. We do not believe the regulation has federalism impact as defined in the Executive order. However, consistent with Executive Order 13132, the Department specifically solicits comments from State and local government officials on this proposed rule.

### List of Subjects

#### 45 CFR 309

Child Support, Grant programs—  
Social programs, Indians, Native Americans.

#### 45 CFR 310

Child Support, Grant programs—  
Social programs, Indians, Native Americans.

(Catalogue of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program)

Dated: October 19, 2007.

**Daniel C. Schneider**

*Acting Assistant Secretary for Children and Families.*

Approved: March 3, 2008.

**Michael O. Leavitt,**

*Secretary, Department of Health and Human Services.*

For the reasons discussed in the preamble, title 45 chapter III of the Code of Federal Regulations is amended as follows:

### PART 309—TRIBAL CHILD SUPPORT ENFORCEMENT (IV-D) PROGRAM

1. The authority citation for part 309 continues to read as follows:

**Authority:** 42 U.S.C. 655(f), 1302.

2. In § 309.145, revise paragraph (h) to read as follows:

#### § 309.145 What costs are allowable for Tribal IV-D programs carried out under § 309.65(a) of this part?

\* \* \* \* \*

(h) Automated data processing computer systems, including:

(1) Planning efforts in the identification, evaluation, and selection of an automated data processing computer system solution meeting the program requirements defined in a Tribal IV-D plan and the automated systems requirements in part 310 of this chapter;

(2) Installation, operation, maintenance, and enhancement of a Model Tribal System as defined in and meeting the requirements of part 310 of this title;

(3) Procurement, installation, operation and maintenance of essential Office Automation capability;

(4) Establishment of Intergovernmental Service Agreements with a State and another comprehensive Tribal IV-D agency for access to the State or other Tribe's existing automated data processing computer system to support Tribal IV-D program operations, and Reasonable Costs associated with use of such a system;

(5) Operation and maintenance of a Tribal automated data processing system funded entirely with Tribal funds if the software ownership rights and license requirements in § 310.25(c) are met; and

(6) Other automation and automated data processing computer system costs in accordance with instructions and guidance issued by the Secretary.

\* \* \* \* \*

1. Revise part 310 to read as follows:

### PART 310—COMPUTERIZED TRIBAL IV-D SYSTEMS AND OFFICE AUTOMATION

#### Subpart A—General Provisions

Sec.

310.0 What does this part cover?

310.1 What definitions apply to this part?

#### Subpart B—Requirements for Computerized Tribal IV-D Systems and Office Automation

310.5 What options are available for Computerized Tribal IV-D Systems and Office Automation?

310.10 What are the functional requirements for the Model Tribal IV-D System?

310.15 What are the safeguards and processes that comprehensive Tribal IV-D agencies must have in place to ensure the security and privacy of Computerized Tribal IV-D Systems and Office Automation?

#### Subpart C—Funding for Computerized Tribal IV-D Systems and Office Automation

310.20 What are the conditions for funding the installation, operation, maintenance and enhancement of computerized Tribal IV-D systems and Office Automation?

310.25 What conditions apply to acquisitions of Computerized Tribal IV-D Systems?

310.30 Under what circumstances would FFP be suspended or disallowed in the costs of Computerized Tribal IV-D Systems?

310.35 Under what circumstances would emergency FFP be available for Computerized Tribal IV-D Systems?

#### Subpart D—Accountability and Monitoring Procedures for Computerized Tribal IV-D Systems

310.40 What requirements apply for accessing systems and records for monitoring Computerized Tribal IV-D Systems and Office Automation?

**Authority:** 42 U.S.C. 655(f) and 1302.

### Subpart A—General Provisions

#### § 310.0 What does this part cover?

This part addresses conditions for funding and requirements governing Computerized Tribal IV-D Systems and Office Automation including:

(a) The automated systems options for comprehensive Tribal IV-D programs in § 310.5 of this part;

(b) The functional requirements for the Model Tribal Systems in § 310.10 of this part;

(c) The security and privacy requirements for Computerized Tribal IV-D Systems and office automation in § 310.15 of this part;

(d) The conditions for funding the installation, operation, maintenance, and enhancement of Computerized Tribal IV-D Systems and Office Automation in § 310.20 of this part;

(e) The conditions that apply to acquisitions of Computerized Tribal IV-D Systems in § 310.25 of this part; and

(f) The accountability and monitoring of Computerized Tribal IV-D Systems in § 310.40 of this part.

#### § 310.1 What definitions apply to this part?

(a) The following definitions apply to this part:

(1) *Automated Data Processing Services* (ADP Services) means services for installation, maintenance, operation, and enhancement of ADP equipment and software performed by a comprehensive Tribal IV-D agency or for that agency through a services agreement or other contractual relationship with a State, another Tribe or private sector entity.

(2) *Comprehensive Tribal IV-D Agency* means the organizational unit in the Tribe or Tribal organization that has the authority for administering or supervising a comprehensive Tribal IV-D program under section 455(f) of the Act and implementing regulations in part 309 of this chapter. This is an agency meeting all requirements of § 309.65(a) of the chapter which is not in the start-up phase under § 309.65(b) of this chapter.

(3) *Computerized Tribal IV-D System* means a comprehensive Tribal IV-D program's system of data processing that is performed by electronic or electrical machines so interconnected and interacting as to minimize the need for human assistance or intervention. A Computerized Tribal IV-D System is:

(i) The Model Tribal System; or

(ii) Access to a State or comprehensive Tribal IV-D agency's existing automated data processing computer system through an Intergovernmental Service Agreement;

(4) *Installation* means the act of installing ADP equipment and software, performing data conversion, and turnover to operation status.

(5) *Maintenance* is the totality of activities required to provide cost-effective support to an operational ADP system. Maintenance is generally routine in nature and can include activities such as: Upgrading ADP hardware, and revising/creating new reports, making limited data element/data base changes, minor data presentation changes, and other software corrections.

(6) *Model Tribal System* means an ADP system designed and developed by the Office for comprehensive Tribal IV-D programs to include system specifications and requirements as specified in this part. The Model Tribal System effectively and efficiently allows a comprehensive Tribal IV-D agency to monitor, account for, and control all child support enforcement services and activities pursuant to part 309 of this chapter.

(7) *Office Automation* means a generic adjunct component of a computer system that supports the routine administrative functions in an organization (e.g., electronic mail, word processing, internet access), as well as similar functions performed as part of an automated data processing system. Office Automation is not specifically designed to meet the programmatic and business-centric needs of an organization.

(8) *Reasonable Cost* means a cost that is determined to be reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining reasonableness with regard to ADP systems cost, consideration shall be given to:

(i) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of a comprehensive Tribal IV-D agency;

(ii) The restraints or requirements imposed by such factors as: sound business practices; arms-length bargaining; Federal, Tribal laws and regulations; and terms and conditions of any direct federal funding;

(iii) Whether the individual concerned acted with prudence in the circumstances considering his or her responsibilities to the comprehensive Tribal IV-D agency, its employees, the public at large, and the Federal Government;

(iv) Market prices for comparable goods or services;

(v) Significant deviations from the established practices of the comprehensive Tribal IV-D agency which may unjustifiably increase the cost; and

(vi) Whether a project's Total Acquisition Cost is in excess of the comprehensive Tribal IV-D agency's total Tribal IV-D program grant award for the year in which the request is made.

(9) *Service Agreement* means a document signed by the Tribe or Tribal organization operating a comprehensive Tribal IV-D program under § 309.65(a) and the State or other comprehensive Tribal IV-D program whenever the latter provides data processing services to the former and identifies those ADP services that the State or other comprehensive Tribal IV-D program will provide to the Tribe or Tribal organization. Additionally, a Service Agreement would include the following details:

- Schedule of charges for each identified ADP service and a certification that these charges apply equally to all users;
- Description of the method(s) of accounting for the services rendered under the agreement and computing service charges;
- Assurances that services provided will be timely and satisfactory;
- Assurances that information in the computer system as well as access, use and disposal of ADP data will be safeguarded in accordance with proposed § 310.15;
- Beginning and ending dates of the period of time covered by the Service Agreement; and
- Schedule of expected total charges for the period of the Service Agreement.

(10) *Simplified Acquisition Threshold* for ADP systems, equipment, and service acquisitions means a Tribe or Tribal organization's monetary threshold for determining whether competitive acquisition rules are required for a given procurement or \$100,000, whichever is less.

(b) The following terms apply to this part and are defined in § 95.605 of this title:

- “Acquisition”;
- “Advanced Planning Document (APD)”;
- “Design or System Design”;
- “Development”;
- “Enhancement”;
- “Federal Financial Participation (FFP)”;
- “Operation”;
- “Project”;
- “Software”;
- “Total Acquisition Cost”.

(c) All of the terms defined in § 309.05 of this chapter apply to this part.

## Subpart B: Requirements for Computerized Tribal IV-D Systems

### § 310.5 What options are available for Computerized Tribal IV-D Systems and office automation?

(a) *Allowable computerized support enforcement systems for a Comprehensive Tribal IV-D agency.* A comprehensive Tribal IV-D agency may have in effect an operational computerized support enforcement system that meets Federal requirements under this part.

(b) *Computerized Tribal IV-D Systems.* A Computerized Tribal IV-D System must be one of the design options listed below. A comprehensive Tribal IV-D program may automate its case processing and record-keeping processes through:

(1) Installation, operation, maintenance, or enhancement of the Model Tribal System designed by the Office to address the program requirements defined in a Tribal IV-D plan in accordance with § 309.65(a) of this chapter and the functional requirements in § 310.10 of this part;

(2) Establishment of Intergovernmental Service Agreements with a State or another comprehensive Tribal IV-D agency for access to that agency's existing automated data processing computer system to support comprehensive Tribal IV-D program operations.

(c) *Office Automation.* A comprehensive Tribal IV-D agency may opt to conduct automated data processing and record-keeping activities through Office Automation. Allowable activities under this section include procurement, installation, operation and maintenance of essential Office Automation capability as defined in § 310.1 of this part.

(d) *Alternative to Computerized Tribal IV-D Systems and Office Automation.* A comprehensive Tribal IV-D agency may design, develop, procure, or enhance an automated data processing system funded entirely with Tribal funds.

### § 310.10 What are the functional requirements for the Model Tribal IV-D system?

A Model Tribal IV-D system must:

(a) Accept, maintain and process the actions in the support collection and paternity determination processes under the Tribal IV-D plan, including:

(1) Identifying information such as social security numbers, names, dates of birth, home addresses and mailing addresses (including postal zip codes) on individuals against whom paternity and support obligations are sought to be established or enforced and on

individuals to whom support obligations are owed, and other data as may be requested by the Office;

(2) Verifying information on individuals referred to in paragraph (a)(1) of this section with Tribal, Federal, State and local agencies, both intra-tribal and intergovernmental;

(3) Maintaining information pertaining to:

(i) Applications and referrals for Tribal IV–D services, including:

(A) Case record;

(B) Referral to the appropriate processing unit (i.e., locate or paternity establishment);

(C) Caseworker notification;

(D) Case Identification Number; and

(E) Participant Identification Number;

(ii) Delinquency and enforcement activities;

(iii) Intra-tribal, intergovernmental, and Federal location of the putative father and noncustodial parents;

(iv) The establishment of paternity;

(v) The establishment of support obligations;

(vi) The payment and status of current support obligations;

(vii) The payment and status of arrearage accounts;

(4) Maintaining data on case actions administered by both the initiating and responding jurisdictions in intergovernmental cases;

(b) Update, maintain and manage all IV–D cases under the Tribal IV–D plan from initial application or referral through collection and enforcement, including any events, transactions, or actions taken therein;

(c) Record and report any fees collected, either directly or by interfacing with State or Tribal financial management and expenditure information;

(d) Distribute current support and arrearage collections in accordance with Federal regulations at § 309.115 of this chapter and Tribal laws;

(e) Maintain, process and monitor accounts receivable on all amounts owed, collected, and distributed with regard to:

(1) Detailed payment histories that include the following:

(i) Amount of each payment;

(ii) Date of each collection;

(iii) Method of payment;

(iv) Distribution of payments; and

(v) Date of each disbursement;

(2) Automated income withholding activities such as:

(i) Recording and maintaining any date the noncustodial parent defaults on payment of the support obligation in an amount equal to the support payable for one month;

(ii) Generating the Standard Federal Income Withholding Form; and

(iii) Allocating amounts received by income withholding according to §§ 309.110 and 309.115 of this chapter.

(f) Maintain and automatically generate data necessary to meet Federal reporting requirements on a timely basis as prescribed by the Office. At a minimum this must include:

(1) Yearly notices on support collected, which are itemized by month of collection and provided to families receiving services under the comprehensive Tribal IV–D program as required in § 309.75(c) of this chapter, to all case participants regarding support collections; and

(2) Reports submitted to the Office for program monitoring and program performance as required in § 309.170 of this chapter;

(g) Provide automated processes to enable the Office to monitor Tribal IV–D program operations and to assess program performance through the audit of financial and statistical data maintained by the system; and

(h) Provide security to prevent unauthorized access to, or use of, the data in the system as detailed in § 310.15 of this part.

**§ 310.15 What are the safeguards and processes that comprehensive Tribal IV–D agencies must have in place to ensure the security and privacy of Computerized Tribal IV–D Systems and Office Automation?**

(a) *Information integrity and security.* The comprehensive Tribal IV–D agency must have safeguards on the integrity, accuracy, completeness, access to, and use of data in the Computerized Tribal IV–D System and Office Automation. Computerized Tribal IV–D and Office Automation Systems should be compliant with the Federal Information Security Management Act, and the Privacy Act. Some of the required safeguards must include written policies and procedures concerning the following:

(1) Periodic evaluations of the system for risk of security and privacy breaches;

(2) Procedures to allow Tribal IV–D personnel controlled access and use of IV–D data, including:

(i) Specifying the data which may be used for particular IV–D program purposes, and the personnel permitted access to such data;

(ii) Permitting access to and use of data for the purpose of exchanging information with State and Tribal agencies administering programs under titles IV–A, IV–E and XIX of the Act to the extent necessary to carry out the comprehensive Tribal IV–D agency's responsibilities with respect to such programs;

(3) Maintenance and control of application software program data;

(4) Mechanisms to back-up and otherwise protect hardware, software, documents, and other communications; and

(5) Mechanisms to report breaches of personally identifiable information to the Department of Homeland Security, and to respond to those breaches.

(b) *Monitoring of access.* The comprehensive Tribal IV–D agency must monitor routine access to and use of the Computerized Tribal IV–D System and Office Automation through methods such as audit trails and feedback mechanisms to guard against, and promptly identify, unauthorized access or use;

(c) *Training and information.* The comprehensive Tribal IV–D agency must have procedures to ensure that all personnel, including Tribal IV–D staff and contractors, who may have access to or be required to use confidential program data in the Computerized Tribal IV–D System and Office Automation are adequately trained in security procedures.

(d) *Penalties.* The comprehensive Tribal IV–D agency must have administrative penalties, including dismissal from employment, for unauthorized access to, disclosure or use of confidential information.

**Subpart C—Funding for Computerized Tribal IV–D Systems and Office Automation**

**§ 310.20 What are the conditions for funding the installation, operation, maintenance and enhancement of Computerized Tribal IV–D Systems and Office Automation?**

(a) *Conditions that must be met for FFP at the applicable matching in § 309.130(c) of this chapter for Computerized Tribal IV–D Systems.* The following conditions must be met to obtain FFP in the costs of installation, operation, maintenance, and enhancement of a Computerized Tribal IV–D System at the applicable matching rate under § 309.130(c) of this chapter:

(1) A comprehensive Tribal IV–D agency must have submitted, and the Office must have approved, an Advance Planning Document (APD) for the installation and enhancement of a Computerized Tribal IV–D System;

(2) An APD for installation of a Computerized Tribal IV–D System must:

(i) Represent the sole systems effort being undertaken by the comprehensive Tribal IV–D agency under this part;

(ii) Describe the projected resource requirements for staff, hardware, software, network connections and other needs and the resources available or expected to be available to meet the requirements;



(iii) Contain a proposed schedule of project milestones with detail sufficient to describe the tasks, activities, and complexity of the initial implementation project;

(iv) Contain a proposed budget including a description of expenditures by category and amount for items related to installing, operating, maintaining, and enhancing the Computerized Tribal IV-D System that are eligible for Federal funding at the applicable matching rate under § 309.130(c) of this chapter; and

(v) Contain a statement that the comprehensive Tribal IV-D agency agrees in writing to use the Computerized Tribal IV-D System for a minimum period of time;

(3) The following conditions, in addition to those in paragraphs (a)(1) and (a)(2) of this section, must be met to obtain FFP in the installation costs of access to a State or another comprehensive Tribal IV-D program's ADP system established under an Intergovernmental Service Agreement. The comprehensive Tribal IV-D agency must:

(i) Maintain a copy of each intergovernmental cooperative agreement and Service Agreement in its files for Federal review; and

(ii) Ensure that the:

(A) Service Agreement for which FFP is being sought, meets the definition of a Service Agreement as defined in proposed § 310.1 of this title;

(C) Claims for FFP conform to the timely claim provisions of part 95 subpart A of this title; and

(D) Service Agreement was not previously disapproved by the Department.

(4) The following conditions, in addition to those in paragraphs (1) through (3) of this section, must be met in order for a comprehensive Tribal IV-D agency to obtain FFP in the costs of enhancements to their Computerized Tribal IV-D System:

(i) The project's Total Acquisition Cost cannot exceed the comprehensive Tribal IV-D agency's total Tribal IV-D program grant award for the year in which the acquisition request is made; and

(ii) The APD budget, schedule and commitment to use the Computerized Tribal IV-D System for a specified minimum period of time must be updated to reflect the enhancement project.

(5) To receive FFP in the costs of the operation and maintenance of a Computerized Tribal IV-D System installed under proposed 310.20 or developed under § 309.145(h)(5), which refers to a Tribal automated data

processing system that is funded entirely with Tribal funds, the comprehensive Tribal IV-D agency must include operation and maintenance costs in its annual Title IV-D program budget submission in accordance with § 309.15(c) of this chapter;

(6) To receive FFP in the costs of the installation, operation, and maintenance of essential Office Automation capabilities, the comprehensive Tribal IV-D agency must include such costs in its annual Title IV-D program budget submission in accordance with § 309.15(c) of this chapter;

(b) *Procedure for APD Submittal.* The comprehensive Tribal IV-D agency must submit an APD for a Computerized Tribal IV-D System to the Commissioner of OCSE, Attention: Division of State and Tribal Systems. The APD submitted by the comprehensive Tribal IV-D agency must be approved and signed by the comprehensive Tribal IV-D agency Director and the appropriate Tribal officials prior to submission to OCSE for Office approval.

#### **§ 310.25 What conditions apply to acquisitions of Computerized Tribal IV-D Systems?**

(a) *APD Approval.* A comprehensive Tribal IV-D agency must have an approved APD in accordance with the applicable requirements of § 310.20 of this part prior to initiating acquisition of a Computerized Tribal IV-D System.

(b) *Procurements.* Requests for Proposals (RFP) and similar procurement documents, contracts, and contract amendments involving costs eligible for FFP, must be submitted to the Office for approval prior to release of the procurement document, and prior to the execution of the resultant contract when a procurement is anticipated to or will exceed the Simplified Acquisition Threshold.

(c) *Software and ownership rights.* (1) All procurement and contract instruments must include a clause that provides that the comprehensive Tribal IV-D agency will have all ownership rights to Computerized Tribal IV-D System software or enhancements thereof and all associated documentation designed, developed or installed with FFP. Intergovernmental Service Agreements are not subject to this paragraph.

(2) The Office reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications and documentation.

(3) FFP is not available for the costs of rental or purchase of proprietary application software developed specifically for a Computerized Tribal IV-D System. Commercial-off-the-shelf (COTS) software packages that are sold or leased to the general public at established catalog or market prices are not subject to the ownership and license provisions of this requirement.

(d) *Requirements for acquisitions under the threshold amount.* A comprehensive Tribal IV-D agency is not required to submit procurement documents, contracts, and contract amendments for acquisitions under the Simplified Acquisition Threshold unless specifically requested to do so in writing by the Office.

#### **§ 310.30 Under what circumstances would FFP be suspended or disallowed in the costs of Computerized Tribal IV-D Systems?**

(a) *Suspension of APD approval.* The Office will suspend approval of the APD for a Computerized Tribal IV-D System approved under this part as of the date that the system ceases to comply substantially with the criteria, requirements, and other provisions of the APD. The Office will notify a Tribal IV-D agency in writing in a notice of suspension, with such suspension effective as of the date on which there is no longer substantial compliance.

(b) *Suspension of FFP.* If the Office suspends approval of an APD in accordance with this part during the installation, operation, or enhancement of a Computerized Tribal IV-D System, FFP will not be available in any expenditure incurred under the APD after the date of the suspension until the date the Office determines that the comprehensive Tribal IV-D agency has taken the actions specified in the notice of suspension described in paragraph (a) of this section. The Office will notify the comprehensive Tribal IV-D agency in writing upon making such a determination.

#### **§ 310.35 Under what circumstances would emergency FFP be available for Computerized Tribal IV-D Systems?**

(a) *Conditions that must be met for emergency FFP.* The Office will consider waiving the approval requirements for acquisitions in emergency situations, such as natural or man-made disasters, upon receipt of a written request from the comprehensive Tribal IV-D agency. In order for the Office to consider waiving the approval requirements in § 310.25 of this part, the following conditions must be met:

(1) The comprehensive Tribal IV-D agency must submit a written request to the Office prior to the acquisition of any



ADP equipment or services. The written request must be sent by registered mail and include:

(i) A brief description of the ADP equipment and/or services to be acquired and an estimate of their costs;

(ii) A brief description of the circumstances which resulted in the comprehensive Tribal IV–D agency's need to proceed prior to obtaining approval from the Office; and

(iii) A description of the harm that will be caused if the comprehensive Tribal IV–D agency does not acquire immediately the ADP equipment and services.

(2) Upon receipt of the information, the Office will, within 14 working days of receipt, take one of the following actions:

(i) Inform the comprehensive Tribal IV–D agency in writing that the request has been disapproved and the reason for disapproval; or

(ii) Inform the comprehensive Tribal IV–D agency in writing that the Office recognizes that an emergency exists and that within 90 calendar days from the date of the initial written request under paragraph (a)(1) of this section the comprehensive Tribal IV–D agency must submit a formal request for approval which includes the information specified at § 310.25 of this title in order for the ADP equipment or services acquisition to be considered for the Office's approval.

(b) *Effective date of emergency FFP.* If the Office approves the request submitted under paragraph (a)(2) of this section, FFP will be available from the date the comprehensive Tribal IV–D agency acquires the ADP equipment and services.

#### **Subpart D—Accountability and Monitoring Procedures for Computerized Tribal IV–D Systems**

##### **§ 310.40 What requirements apply for accessing systems and records for monitoring Computerized Tribal IV–D Systems and Office Automation?**

In accordance with Part 95 of this title, a comprehensive Tribal IV–D agency must allow the Office access to the system in all of its aspects, including installation, operation, and cost records of contractors and subcontractors, and of Service Agreements at such intervals as are deemed necessary by the Office to determine whether the conditions for FFP approval are being met and to determine the efficiency, effectiveness, reasonableness of the system and its cost.

[FR Doc. E8–13042 Filed 6–10–08; 8:45 am]

BILLING CODE 4120–01–P

# Notices

Federal Register

Vol. 73, No. 113

Wednesday, June 11, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

#### Notice of Intent To Grant Exclusive License

**AGENCY:** Agricultural Research Service, USDA.

**ACTION:** Notice of intent.

**SUMMARY:** Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Oser Technologies LLC of Fairfield, New Jersey, an exclusive license to U.S. Patent Application Serial No. 11/471,327, "Method and Apparatus for Treatment of Food Products", filed on June 20, 2006.

**DATES:** Comments must be received within thirty (30) days of the date of publication of this Notice in the **Federal Register**.

**ADDRESSES:** Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4-1174, Beltsville, Maryland 20705-5131.

**FOR FURTHER INFORMATION CONTACT:** June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301-504-5989.

**SUPPLEMENTARY INFORMATION:** The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Oser Technologies LLC of Fairfield, New Jersey has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the

requirements of 35 U.S.C. 209 and 37 CFR 404.7.

**Richard J. Brenner,**

*Assistant Administrator.*

[FR Doc. E8-13081 Filed 6-10-08; 8:45 am]

**BILLING CODE 3410-03-P**

## DEPARTMENT OF COMMERCE

[Docket No.: 080603727-8737-01]

### Privacy Act System of Records

**AGENCY:** Department of Commerce.

**ACTION:** Notice of a new Privacy Act System of Records: COMMERCE/NOAA-19, Permits and Registrations for United States Federally Regulated Fisheries.

**SUMMARY:** The Department of Commerce (Commerce) publishes this notice to announce the effective date of a Privacy Act System of Records notice entitled COMMERCE/NOAA-19, Permits and Registrations for United States Federally Regulated Fisheries.

**DATES:** The system of records becomes effective on June 11, 2008.

**ADDRESSES:** For a copy of the system of records please mail requests to Ted Hawes, NOAA's National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Ted Hawes, NOAA's National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930, 978-281-9296.

**SUPPLEMENTARY INFORMATION:** On April 17, 2008, the Department of Commerce published and requested comments on a proposed Privacy Act System of Records notice entitled COMMERCE/NOAA-19, Permits and Registrations for United States Federally Regulated Fisheries. No comments were received in response to the request for comments. By this notice, the Department is adopting the proposed system as final without changes effective June 11, 2008.

Dated: June 5, 2008.

**Brenda Dolan,**

*U.S. Department of Commerce, Freedom of Information/Privacy Act Officer.*

[FR Doc. E8-13051 Filed 6-10-08; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

#### Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). **AGENCY:** United States Patent and Trademark Office (USPTO).

**Title:** Applications for Trademark Registration.

**Form Number(s):** PTO Forms 4.8, 4.9, 1478, and 1478(a).

**Agency Approval Number:** 0651-0009.

**Type of Request:** Extension of a currently approved collection.

**Burden:** 84,821 hours annually.

**Number of Respondents:** 291,859 responses per year with an estimated 279,692 responses filed electronically.

**Avg. Hours Per Response:** The USPTO estimates that it will take the public between 15 to 23 minutes (0.25 to 0.38 hours) to complete the applications in this collection, depending on the form and the nature of the information. This includes the time to gather the necessary information, create the documents, and submit the completed application. The USPTO estimates that it takes slightly less time to complete the electronic counterparts of these forms. The time estimates for the electronic forms in this collection are based on the average amount of time needed to complete and electronically file the associated form.

**Needs and Uses:** This collection of information is required by the Trademark Act, 15 U.S.C. 1051 *et seq.* and is implemented through the Trademark rules set forth in 37 CFR Part 2. It provides for the registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses who use their marks or intend to use their marks in commerce may file an application with the USPTO to register their marks. The USPTO uses the information in this collection to determine whether the marks may be registered. This collection contains

three paper forms and six electronic forms that are available through the Trademark Electronic Application System (TEAS). The information in this collection is available to the public.

**Affected Public:** Primarily businesses or other for-profit organizations.

**Frequency:** On occasion.

**Respondent's Obligation:** Required to obtain or retain benefits.

**OMB Desk Officer:** David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by any of the following:

- **E-mail:** [Susan.Fawcett@uspto.gov](mailto:Susan.Fawcett@uspto.gov). Include "0651-0009 copy request" in the subject line of the message.

- **Fax:** 571-273-0112, marked to the attention of Susan K. Fawcett.

- **Mail:** Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

Written comments and recommendations for the proposed information collection should be sent on or before July 11, 2008 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: June 4, 2008.

**Susan K. Fawcett,**

*Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.*

[FR Doc. E8-13048 Filed 6-10-08; 8:45 am]

**BILLING CODE 3510-16-P**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

June 6, 2008.

**AGENCY:** The Committee for the Implementation of Textile Agreements

**ACTION:** Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement

**EFFECTIVE DATE:** June 11, 2008.

**SUMMARY:** The Committee for the Implementation of Textile Agreements (CITA) has determined that certain 100% cotton woven indigo-dyed fabric, as specified below, is not available in

commercial quantities in a timely manner in the CAFTA-DR region. The product will be added to the list in Annex 3.25 of the CAFTA-DR in unrestricted quantities.

#### FOR FURTHER INFORMATION CONTACT:

Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482 3651.

#### FOR FURTHER INFORMATION ON-

**LINE:** <http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf>. Reference number: 64.2008.05.06.Fabric.ST&RforBWA

#### SUPPLEMENTARY INFORMATION:

**Authority:** Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Act); the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

#### BACKGROUND:

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. See Annex 3.25, Note; see also section 203(o)(4)(C) of the Act.

The CAFTA-DR Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Act for modifying the Annex 3.25 list. On March 21, 2007, CITA published final procedures it would follow in considering requests to modify the Annex 3.25 list (72 FR 13256).

On May 6, 2008, the Chairman of CITA received a request from Sandler, Travis, & Rosenberg, P.A. on behalf of B\*W\*A for certain 100% cotton woven indigo-dyed fabrics, of the specifications detailed below. On May 7, 2008, CITA notified interested parties of, and posted on its website, the accepted petition and requested that interested entities provide, by May 20, 2008, a response advising of its objection to the request or its ability to supply the subject product, and rebuttals to responses by May 27, 2008. No interested entity filed

a response advising of its objection to the request or its ability to supply the subject product.

In accordance with Section 203(o)(4) of the CAFTA-DR Act, and its procedures, as no interested entity submitted a response objecting to the request or expressing an ability to supply the subject product, CITA has determined to add the specified fabrics to the list in Annex 3.25 CAFTA-DR Agreement.

The subject fabrics are added to the list in Annex 3.25 CAFTA-DR Agreement in unrestricted quantities. A revised list has been published on-line.

#### Specifications:

HTS: 5208.39.6090; 5208.39.8090

Fiber Content: 100% combed cotton

Average Yarn Number:

Metric: 64/2 + 64/2 x 64/2 + 64/2 to 71/2 + 71/2 x 71/2 + 71/2

English: 38/2 + 38/2 x 38/2 + 38/2 to 42/2 + 42/2 x 42/2 + 42/2

Construction: Woven with a dobby attachment

Weight:

Metric: 150-166 gms/sq. mtr.

English: 4.4 - 4.9 oz./sq. yd.

Width:

Metric: 130-144 cm

English: 51-57 in.

Finish: Piece dyed with synthetic indigo, color index no: 73000

**R. Matthew Priest,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. E8-13071 Filed 6-10-08; 8:45 am]

**BILLING CODE 3510-DS-S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

June 6, 2008.

**AGENCY:** The Committee for the Implementation of Textile Agreements

**ACTION:** Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement

**EFFECTIVE DATE:** June 11, 2008.

**SUMMARY:** The Committee for the Implementation of Textile Agreements (CITA) has determined that certain 100% cotton woven indigo-dyed fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA-DR region. The product will be added to the list in Annex 3.25 of the CAFTA-DR in unrestricted quantities.

**FOR FURTHER INFORMATION CONTACT:**

Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482 3651.

**FOR FURTHER INFORMATION ON-**

**LINE:** <http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf>. Reference number: 66.2008.05.06.Fabric.ST&RforBWA

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Act); the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

**BACKGROUND:**

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. See Annex 3.25, Note; see also section 203(o)(4)(C) of the Act.

The CAFTA-DR Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Act for modifying the Annex 3.25 list. On March 21, 2007, CITA published final procedures it would follow in considering requests to modify the Annex 3.25 list (72 FR 13256).

On May 6, 2008, the Chairman of CITA received a request from Sandler, Travis, & Rosenberg, P.A. on behalf of B\*W\*A for certain 100% cotton woven indigo-dyed fabrics, of the specifications detailed below. On May 7, 2008, CITA notified interested parties of, and posted on its website, the accepted petition and requested that interested entities provide, by May 20, 2008, a response advising of its objection to the request or its ability to supply the subject product, and rebuttals to responses by May 27, 2008. No interested entity filed a response advising of its objection to the request or its ability to supply the subject product.

In accordance with Section 203(o)(4) of the CAFTA-DR Act, and its

procedures, as no interested entity submitted a response objecting to the request or expressing an ability to supply the subject product, CITA has determined to add the specified fabrics to the list in Annex 3.25 CAFTA-DR Agreement.

The subject fabrics are added to the list in Annex 3.25 CAFTA-DR Agreement in unrestricted quantities. A revised list has been published on-line.

**Specifications:**

HTS: 5208.39.6090 and 5208.39.8090  
Fiber Content: 100% combed cotton  
Average Yarn Number:  
Metric: 64/2 + 64/1 x 64/1 to 71/2 + 71/1 x 71/2  
English: 38/2 + 38/1 x 38/1 to 42/2 + 42/1 x 42/1  
Construction: Woven with a dobby attachment  
Weight:  
Metric: 135-149 gms/sq. mtr.  
English: 4.0 - 4.4 oz./sq. yd.  
Width:  
Metric: 135-149 cm.  
English: 53-59 in.  
Finish: Piece dyed with synthetic indigo, color index no: 73000

**R. Matthew Priest,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. E8-13072 Filed 6-10-08; 8:45 am]

**BILLING CODE 3510-DS-S**

## **COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**

### **Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)**

June 6, 2008.

**AGENCY:** The Committee for the Implementation of Textile Agreements

**ACTION:** Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement

**EFFECTIVE DATE:** June 11, 2008.

**SUMMARY:** The Committee for the Implementation of Textile Agreements (CITA) has determined that certain 100% cotton woven indigo-dyed fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA-DR region. The product will be added to the list in Annex 3.25 of the CAFTA-DR in unrestricted quantities.

**FOR FURTHER INFORMATION CONTACT:**

Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482 3651.

**FOR FURTHER INFORMATION ON-**

**LINE:** <http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf>. Reference number: 65.2008.05.06.Fabric.ST&RforBWA

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Act); the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

**BACKGROUND:**

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. See Annex 3.25, Note; see also section 203(o)(4)(C) of the Act.

The CAFTA-DR Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Act for modifying the Annex 3.25 list. On March 21, 2007, CITA published final procedures it would follow in considering requests to modify the Annex 3.25 list (72 FR 13256).

On May 6, 2008, the Chairman of CITA received a request from Sandler, Travis, & Rosenberg, P.A. on behalf of B\*W\*A for certain 100% cotton woven indigo-dyed fabrics, of the specifications detailed below. On May 7, 2008, CITA notified interested parties of, and posted on its website, the accepted petition and requested that interested entities provide, by May 20, 2008, a response advising of its objection to the request or its ability to supply the subject product, and rebuttals to responses by May 27, 2008. No interested entity filed a response advising of its objection to the request or its ability to supply the subject product.

In accordance with Section 203(o)(4) of the CAFTA-DR Act, and its procedures, as no interested entity submitted a response objecting to the request or expressing an ability to supply the subject product, CITA has determined to add the specified fabrics to the list in Annex 3.25 CAFTA-DR Agreement.

The subject fabrics are added to the list in Annex 3.25 CAFTA-DR Agreement in unrestricted quantities. A revised list has been published on-line.

**Specifications:**

HTS: 5208.39.8090  
 Fiber Content: 100% combed cotton  
 Average Yarn Number:  
   Metric: 97/2 x 64/1 to 107/2 x+ 71/1  
   English: 57/2 x 38/1 to 63/2 x 42/1  
 Construction: Woven with a dobby attachment  
 Weight:  
   Metric: 124-137 gms/sq. mtr.  
   English: 3.7 - 4.0 oz./sq. yd.  
 Width:  
   Metric: 135-149 cm  
   English: 53-59 in.  
 Finish: Piece dyed with synthetic indigo, color index no: 73000

**R. Matthew Priest,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. E8-13074 Filed 6-10-08; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Advisory Committee Meeting Notice

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102-3.140 through 160), the Department of the Army announces the following committee meeting:

*Name of Committee:* Army Education Advisory Committee.

*Date:* July 7, 2008.

*Place:* Meeting will be conducted electronically online using Adobe Connect.

*Time:* 1400-1500.

**FOR FURTHER INFORMATION CONTACT:** For information please contact Mr. Wayne Joyner at

albert.wayne.joyner@us.army.mil or (757) 788-5890. Written submissions are to be submitted to the following address: Army Education Advisory Committee, ATTN: Designated Federal Officer, 5 Fenwick Road, building 161, room 217, Fort Monroe, Virginia 23651. Attendance will be limited to those persons who have notified the Advisory Committee Management Office at least 10 calendar days prior to the meeting requesting the web address of the meeting and guest authorization.

**SUPPLEMENTARY INFORMATION:** *Proposed Agenda:* The meeting agenda includes a

review of actions and recommendations from five subcommittees: Defense Language Institute Foreign Language Center, Command and General Staff College Board of Visitors, Army War College Board of Visitors, Distance Learning/Training Technology Applications Subcommittee, and the Reserve Officer Training Corps Subcommittee. Approved recommendations will be forwarded to the Office of the Administrative Assistant, Secretary of the Army, the appropriate Subcommittee's Alternate Designated Federal Official (ADFO), and the Subcommittee's decision maker.

**Filing Written Statement:** Pursuant to 41 CFR 102-3.140d, the Committee is not obligated to allow the public to speak; however, interested persons may submit a written statement for consideration by the Subcommittees. Individuals submitting a written statement must submit their statement to the Designated Federal Officer (DFO) at the address listed (see **FOR FURTHER INFORMATION CONTACT**). Written statements not received at least 10 calendar days prior to the meeting may not be provided to or considered by the subcommittees until its next meeting.

The DFO will review all timely submissions with the Chairperson, and ensure they are provided to the members of the respective subcommittee before the meeting. After reviewing written comments, the Chairperson and the DFO may choose to invite the submitter of the comments to orally present their issue during the open portion of this meeting or at a future meeting.

The DFO, in consultation with the Chairperson, may allot a specific amount of time for the members of the public to present their issues for review and discussion.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. E8-13052 Filed 6-10-08; 8:45 am]

**BILLING CODE 3710-08-P**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### Notice of Intent To Prepare a Draft Environmental Impact Statement for Carolinas Cement Company LLC Castle Hayne Project in New Hanover County, NC

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Army Corps of Engineers (COE), Wilmington District, Wilmington Regulatory Division is amending the request for Department of the Army authorization, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, from Carolinas Cement Company LLC (a subsidiary of Titan America LLC) to construct the Carolinas Cement Company LLC Castle Hayne Project. This project will include quarrying to support cement manufacturing in northern New Hanover County, NC. The amendment is a change in date and location of the scoping meeting and an extension of the comment period deadline. The original Notice of Intent was published in the **Federal Register** on May 30, 2008 (73 FR 31072), with a comment deadline of June 30, 2008.

**DATES:** The public scoping meeting date and location for the DEIS has been changed. Originally it was to be held at Emsley A. Laney High School, 2700 North College Road, Wilmington, NC, June 12, 2008, at 6 p.m. EST, but because of a scheduling conflict with New Hanover County and the lack of air conditioning for the facilities at the High School the meeting had to be rescheduled. The meeting will now take place at Wilmington Christian Academy/Grace Baptist Church, 1401 North College Road, Wilmington, NC, July 1, 2008, at 6 p.m. EST. Also, the comment deadline is being extended from June 30, 2008, to July 15, 2008.

**ADDRESSES:** Copies of comments and questions regarding scoping of the Draft EIS may be addressed to: U.S. Army Corps of Engineers, Wilmington District, Regulatory Division, ATTN: File Number SAW-2007-00073, P.O. Box 1890, Wilmington, NC 28402-1890.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and DEIS can be directed to Mr. Henry Wicker, Regulatory Division, telephone: (910) 251-4930.

**SUPPLEMENTARY INFORMATION:** None.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. E8-13100 Filed 6-10-08; 8:45 am]

**BILLING CODE 3710-GN-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. ER08-1050-000]

**Dragon Energy LLC; Supplemental Notice that Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

June 4, 2008.

This is a supplemental notice in the above-referenced proceeding of Dragon Energy LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 C.F.R. Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing interventions or protests with regard to the applicant's request for blanket authorization, under 18 C.F.R. Part 34, of future issuances of securities and assumptions of liability, is June 24, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any

FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8-13024 Filed 6-10-08; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Combined Notice of Filings #1**

June 4, 2008.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC08-96-000.

*Applicants:* Armstrong Energy Limited Ptnshp, LLLP; TPF APT Holdings, LLC; Warburg Pincus Private Equity IX, L.P.; Pleasants Energy LLC; Troy Energy LLC; Tenaska Power Fund, L.P.; Calumet Co-Investment Fund, L.P., IPA Central, LLC.

*Description:* Application of TPF APT Holdings LLC et al for necessary approvals for indirect transfer to Buyer of all ownership interests in Armstrong, Pleasants, Troy and CEDT, each of which owns and operates an existing facility.

*Filed Date:* 05/30/2008.

*Accession Number:* 20080603-0037.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* EC08-97-000.

*Applicants:* Otter Tail Corporation.

*Description:* Application for Authorization Under Section 203 of the Federal Power Act and Request for Expedited Action of Otter Tail Corporation.

*Filed Date:* 06/03/2008.

*Accession Number:* 20080603-5085.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 24, 2008.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER97-4345-023; ER98-511-011.

*Applicants:* OGE Energy Resources, Inc.; Oklahoma Gas and Electric Company.

*Description:* Oklahoma Gas and Electric Co et al submits a notice of change in status.

*Filed Date:* 05/30/2008.

*Accession Number:* 20080604-0031.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER04-617-003; ER99-3911-006.

*Applicants:* Black River Generation, LLC; Northbrook New York, LLC

*Description:* Black River Generation, LLC et al. submits a compliance filing pursuant to Order 697.

*Filed Date:* 06/02/2008.

*Accession Number:* 20080604-0049.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 23, 2008.

*Docket Numbers:* ER05-1178-013; ER05-1191-013.

*Applicants:* Gila River Power, L.P.; Union Power Partners, L.P.

*Description:* Project Companies submit Notice of Change in Status relating to their upstream ownership structure.

*Filed Date:* 05/30/2008.

*Accession Number:* 20080604-0037.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER07-357-003.

*Applicants:* Fenton Power Partners I, LLC.

*Description:* Fenton Power Partners I, LLC submits changes to its market-based rate tariff to comply with Order 697.

*Filed Date:* 05/05/2008.

*Accession Number:* 20080508-0212.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 11, 2008.

*Docket Numbers:* ER08-878-001.

*Applicants:* Wisconsin Power and Light Company.

*Description:* Wisconsin Power and Light Company submits revised Original Sheets 9 to Substitute Original Sheet 9A etc to the Balancing Area Operations Coordination Agreement pursuant to Order 614.

*Filed Date:* 06/02/2008.

*Accession Number:* 20080604-0032.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 11, 2008.

*Docket Numbers:* ER08-1032-000.

*Applicants:* Westar Energy, Inc.

*Description:* Westar Energy, Inc submits Second Revised Sheets 4 and 1 to the Wholesale Electric Service Agreement commencing 2/1/088, designated First Revised Rate Schedule FERC 245 between Westar and the City of Vermillion, Kansas etc.

*Filed Date:* 05/30/2008.

*Accession Number:* 20080603-0095.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1033-000.

*Applicants:* Westar Energy, Inc.

*Description:* Westar Energy, Inc submits a Petition for Approval of Settlement Agreement.

*Filed Date:* 05/30/2008.

*Accession Number:* 20080603-0100.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1034-000.

*Applicants:* Westar Energy, Inc.  
*Description:* Westar Energy Inc submits the Kansas and Electric Company submits Second Revised Sheet 11 and 1 to the Wholesale Electric Service Agreement commencing 2/1/88 as First Revised Rate Schedule 175.

*Filed Date:* 05/30/2008.

*Accession Number:* 20080603-0094.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1038-000.

*Applicants:* New England Power Pool.

*Description:* The New England Power Pool Participants Committee submits signature pages of the New England Power Pool Agreement dated as of 9/1/71.

*Filed Date:* 05/30/2008.

*Accession Number:* 20080603-0093.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1047-000.

*Applicants:* Westar Energy, Inc.

*Description:* Westar Energy, Inc. submits a Petition for Approval of Settlement Agreement.

*Filed Date:* 05/30/2008.

*Accession Number:* 20080603-0117.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1050-000.

*Applicants:* Dragon Energy LLC.

*Description:* Dragon Energy LLC submits an application for authorization to make wholesale sales of energy and capacity at negotiated, market-based rates.

*Filed Date:* 06/02/2008.

*Accession Number:* 20080603-0112.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 23, 2008.

*Docket Numbers:* ER08-1051-000.

*Applicants:* NSTAR Electric Company.

*Description:* NSTAR Electric Company submits its Annual Informational filing containing the true-up of billings under Schedule 21-NSTAR to Schedule 11 of the ISO New England Inc., Transmission, Markets and Services Tariff, FERC Electric Tariff 3 etc.

*Filed Date:* 06/02/2008.

*Accession Number:* 20080603-0118.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 23, 2008.

*Docket Numbers:* ER08-1056-000.

*Applicants:* Entergy Services, Inc.

*Description:* Entergy Services, Inc. on behalf of the Entergy Operating Companies submits the rates to implement the decision of the Commission as contained in Opinion 480 *et al.*

*Filed Date:* 05/30/2008.

*Accession Number:* 20080603-0120.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1057-000.

*Applicants:* Entergy Services, Inc.

*Description:* Entergy Services, Inc. on behalf of the Entergy Operating Companies submits a Summary of Redetermined Rates etc. for the Point-to-Point Transmission Service Tariff.

*Filed Date:* 05/30/2008.

*Accession Number:* 20080603-0119.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1058-000.

*Applicants:* Southern California Edison Company.

*Description:* Southern California Edison Company submits a letter agreement between the Transmission and Distribution Business Unit of SCE and the Generation Business Unit of SCE.

*Filed Date:* 06/02/2008.

*Accession Number:* 20080603-0121.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 23, 2008.

*Docket Numbers:* ER08-1059-000; ER06-615-024; ER07-1257-006; ER08-519-002.

*Applicants:* California Independent System Operator Corporation.

*Description:* California Independent System Operator Corporation submits an amendment to both the current ISO Tariff and the CAISO's Market Redesign and Technology Upgrade Tariff to enhance provisions under those tariffs relating to Congestion etc.

*Filed Date:* 05/30/2008.

*Accession Number:* 20080604-0041.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1060-000.

*Applicants:* American Electric Power Service Corporation.

*Description:* American Electric Power System submits an amendment to Part IV of the Open Access Transmission Tariff to FERC Electric Tariff, Third Revised Volume 6.

*Filed Date:* 06/02/2008.

*Accession Number:* 20080604-0033.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 23, 2008.

*Docket Numbers:* ER08-1061-000.

*Applicants:* American Transmission Company LLC.

*Description:* American Transmission Co., LLC submits an executed Distribution Transmission Interconnection Agreement with Lake Mills Light & Water Department dated 5/1/08.

*Filed Date:* 06/02/2008.

*Accession Number:* 20080604-0036.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 23, 2008.

*Docket Numbers:* ER08-1063-000.

*Applicants:* Southern Company Services, Inc.

*Description:* Southern Companies submits Revision 1 to the Service Agreement for Network Integration Transmission Service between Southern Companies and Georgia Transmission Corporation, an Electric Membership Corporation.

*Filed Date:* 06/03/2008.

*Accession Number:* 20080604-0035.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 24, 2008.

*Docket Numbers:* ER08-1064-000.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc. *et al.* submit proposed revisions to Attachment 3, Interregional Coordination Process of their Joint Operating Agreement.

*Filed Date:* 06/03/2008.

*Accession Number:* 20080604-0034.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 24, 2008.

*Docket Numbers:* ER08-1062-000.

*Applicants:* Westar Energy, Inc.

*Description:* Westar Energy, Inc. submits Petition for Approval of Settlement Agreement.

*Filed Date:* 05/30/2008.

*Accession Number:* 20080604-0038.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

*Docket Numbers:* OA08-92-000.

*Applicants:* Entergy Services Inc.

*Description:* Motion of Entergy Services, Inc. for Extension of the Limited Waiver of Order No. 890-A Compliance Requirement.

*Filed Date:* 05/30/2008.

*Accession Number:* 20080530-5146.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E8-13036 Filed 6-10-08; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

June 02, 2008.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC08-69-000.

*Applicants:* Public Service Company of New Mexico.

*Description:* Amendment to Application of Public Service Company of New Mexico.

*Filed Date:* 05/27/2008.

*Accession Number:* 20080527-5055.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 6, 2008.

*Docket Numbers:* EC08-93-000.

*Applicants:* Pittsfield Generating Company, L.P., PE-Pittsfield LLC, Pittsfield Power Holding Company LLC, Pittsfield Power GP LLC.

*Description:* Pittsfield Generating Company *et al.* submits an application

for authorization of the disposition of jurisdictional facilities.

*Filed Date:* 05/23/2008.

*Accession Number:* 20080528-0145.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 13, 2008.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER99-1757-014.

*Applicants:* The Empire District Electric Company.

*Description:* Empire District Electric Company submits Sixth Revised Sheet 1 and Second Revised Sheet 1A as part of its FERC Electric Tariff, First Volume 3 effective 9/18/07.

*Filed Date:* 05/27/2008.

*Accession Number:* 20080529-0055.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 17, 2008.

*Docket Numbers:* ER03-9-012; ER98-2157-013.

*Applicants:* Westar Energy, Inc.;

Kansas Gas and Electric Company.

*Description:* Westar Energy, Inc. *et al.* submits a notice of non-material change in status related to Westar's ownership and control of approximately 300 MW of natural gas-fired combustion turbine generation through the construction of new generation.

*Filed Date:* 05/29/2008.

*Accession Number:* 20080602-0110.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 19, 2008.

*Docket Numbers:* ER03-1413-005.

*Applicants:* Sempra Energy Trading Corp.

*Description:* Sempra Energy Trading, LLC submits response to FERC's 4/22/08 supplemental request for additional information.

*Filed Date:* 05/22/2008.

*Accession Number:* 20080528-0052.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 12, 2008.

*Docket Numbers:* ER07-476-002.

*Applicants:* ISO New England Inc., New England Power Pool.

*Description:* ISO New England *et al.* submits proposed amendments to the ISO Tariff in compliance with the Commission's 2/25/08 order in the proceeding and with Order 681 and 681-A on long-term firm transmission rights.

*Filed Date:* 05/27/2008.

*Accession Number:* 20080529-0054.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 17, 2008.

*Docket Numbers:* ER07-1372-008.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator Inc. submits amendments to their Balancing Authority Agreement in connection

with the establishment of Ancillary Services Markets etc.

*Filed Date:* 05/23/2008.

*Accession Number:* 20080528-0091.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 13, 2008.

*Docket Numbers:* ER07-521-004.

*Applicants:* New York Independent System Operator, Inc.

*Description:* New York Independent System Operator Inc. submits an errata to its 5/16/08 compliance filing.

*Filed Date:* 05/23/2008.

*Accession Number:* 20080528-0094.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 13, 2008.

*Docket Numbers:* ER08-92-004.

*Applicants:* Virginia Electric and Power Company.

*Description:* Dominion Virginia Power submits revised tariff sheets in Attachments H-16A and H-16B to PJM Interconnection, LLC's open-access transmission tariff and on 6/2/08 submits an errata to this filing.

*Filed Date:* 05/29/2008; 06/02/2008.

*Accession Number:* 20080602-0101; 20080603-0144.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 19, 2008.

*Docket Numbers:* ER08-394-002.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc. submits proposed revisions to its Open Access Transmission and Energy Markets Tariff in compliance with the Commission's directives.

*Filed Date:* 05/27/2008.

*Accession Number:* 20080529-0053.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 17, 2008.

*Docket Numbers:* ER08-627-002.

*Applicants:* NSTAR Electric Company.

*Description:* NSTAR Electric Company submits proposed clarification and revisions to Schedule 20A-NSTAR of the ISO New England Inc. Open Access Transmission Tariff to comply with the 30 day compliance filing directives set forth etc.

*Filed Date:* 05/29/2008.

*Accession Number:* 20080602-0112.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 19, 2008.

*Docket Numbers:* ER08-628-001.

*Applicants:* California Independent System Operator Corporation.

*Description:* California Independent System Operator Corporation submits the instant filing in compliance with the Commission's Order Conditional Accepting Tariff Revisions etc.

*Filed Date:* 05/29/2008.

*Accession Number:* 20080602-0111.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 19, 2008.



*Docket Numbers:* ER08–961–001.

*Applicants:* Arizona Public Service Company.

*Description:* Arizona Public Service Company submits revision to its May 15 informational filing of its Annual Update of transmission service rates pursuant to the APS Open Access Transmission Tariff.

*Filed Date:* 05/27/2008.

*Accession Number:* 20080529–0052.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 17, 2008.

*Docket Numbers:* ER08–1004–000.

*Applicants:* Global Advisors Power Marketing, LP.

*Description:* Global Advisors Power Marketing, LP submits Notice of Cancellation, a Second Revised Sheet 1 to their market-based rate tariff.

*Filed Date:* 05/23/2008.

*Accession Number:* 20080527–0035.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 13, 2008.

*Docket Numbers:* ER08–1005–000.

*Applicants:* Southern California Edison Company.

*Description:* Southern California Edison Co. submits the Large Generator Interconnection Agreement with Terra-Gen Dixie Valley, LLC *et al.*

*Filed Date:* 05/23/2008.

*Accession Number:* 20080527–0034.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 13, 2008.

*Docket Numbers:* ER08–1006–000.

*Applicants:* Entergy Services, Inc.

*Description:* Entergy Mississippi, Inc. submits amendments to the Amended and Restated Interconnection and Operating Agreement with Southaven Power, LLC.

*Filed Date:* 05/23/2008.

*Accession Number:* 20080527–0036.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 13, 2008.

*Docket Numbers:* ER08–1008–000.

*Applicants:* Arizona Public Service Company.

*Description:* Arizona Public Service Co. submits an Interconnection Agreement with Electrical District No. 3 of Pinal County, AZ.

*Filed Date:* 05/23/2008.

*Accession Number:* 20080528–0090.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 13, 2008.

*Docket Numbers:* ER08–1009–000.

*Applicants:* Kansas City Power & Light Company.

*Description:* Kansas City Power & Light Co. submits First Revised FERC Rate Schedule 101.

*Filed Date:* 05/27/2008.

*Accession Number:* 20080528–0089.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 17, 2008.

*Docket Numbers:* ER08–1010–000.

*Applicants:* Commonwealth Edison Company, Commonwealth Edison Co. of Indiana, Inc.

*Description:* Commonwealth Edison Company Indiana, Inc. submits revise Attachment H–13 (Network Integration Transmission Service for the ConEd Zone) of the PJM Interconnection, LLC Open Access Transmission Tariff.

*Filed Date:* 05/27/2008.

*Accession Number:* 20080529–0051.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 17, 2008.

*Docket Numbers:* ER08–1011–000.

*Applicants:* California Independent System Operator Corporation.

*Description:* California Independent System Operator Corporation submits an amendment to the CAISO's Market Redesign and Technology Upgrade Tariff.

*Filed Date:* 05/23/2008.

*Accession Number:* 20080529–0050.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 13, 2008.

*Docket Numbers:* ER08–1012–000.

*Applicants:* PPL Renewable Energy, LLC.

*Description:* PPL Renewable Energy, LLC submits the Application to sell Electric Energy Capacity and Ancillary Services at Market-Based Rates.

*Filed Date:* 05/28/2008.

*Accession Number:* 20080529–0167.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 18, 2008.

*Docket Numbers:* ER08–1013–000.

*Applicants:* Mirant Lovett, LLC.

*Description:* Mirant Lovett LLC seeks to cancel their FERC Electric Tariff, First Revised Volume 1, effective 7/28/08.

*Filed Date:* 05/28/2008.

*Accession Number:* 20080529–0166.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 18, 2008.

*Docket Numbers:* ER08–1014–000.

*Applicants:* Niagara Mohawk Power Corporation.

*Description:* National Grid submits First Revised Service Agreement 1163 with Fibertek Energy LLC under New York Independent System Operator LLC open access transmission tariff, FERC Electric Tariff, Original Volume 1.

*Filed Date:* 05/28/2008.

*Accession Number:* 20080529–0165.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 18, 2008.

*Docket Numbers:* ER08–1015–000.

*Applicants:* Ameren Services Company.

*Description:* Central Illinois Public Service Company submits an executed service agreement for Wholesale Distribution Service with Mt. Carmel Public Utility Co.

*Filed Date:* 05/28/2008.

*Accession Number:* 20080529–0164.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 18, 2008.

*Docket Numbers:* ER08–1016–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection LLC submits revisions to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement.

*Filed Date:* 05/28/2008.

*Accession Number:* 20080529–0163.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 18, 2008.

*Docket Numbers:* ER08–1017–000.

*Applicants:* PacifiCorp.

*Description:* PacifiCorp submits Service Agreement 452 dated 4/30/08 for the provision of Long-Term Firm Point-to-Point Transmission Service Between Powerex and PacifiCorp.

*Filed Date:* 05/29/2008.

*Accession Number:* 20080602–0109.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 19, 2008.

*Docket Numbers:* ER08–1018–000.

*Applicants:* Bangor Hydro-Electric Company.

*Description:* Bangor Hydro-Electric Company submits revisions to its local service schedule set forth as Schedule 21–BHE in the ISO New England Inc Transmission Markets and Services Tariff.

*Filed Date:* 05/29/2008.

*Accession Number:* 20080602–0108.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 19, 2008.

*Docket Numbers:* ER08–1019–000.

*Applicants:* Wisconsin Electric Power Company.

*Description:* Wisconsin Electric Power Company submits Metering Service Agreement with Alliant Energy Nennah LLC, FERC Tariff 120, effective 6/1/08.

*Filed Date:* 05/29/2008.

*Accession Number:* 20080602–0107.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 19, 2008.

*Docket Numbers:* ER08–1021–000.

*Applicants:* CMS Distributed Power, L.L.C.

*Description:* CMS Distributed Power, LLC submits cancellation of market-based electric power tariff.

*Filed Date:* 05/29/2008.

*Accession Number:* 20080602–0106.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 19, 2008.

*Docket Numbers:* ER96–780–019;

ER01–1633–007; ER00–3240–010;

ER03–1383–010.

*Applicants:* Southern Company Services, Inc.; Southern Company—Florida LLC; Oleander Power Project, L.P.; DeSoto County Generating Company, LLC.

*Description:* Alabama Power Co *et al.* submits a Report of Non-Material Change In Status and Order 697 Compliance Filing.

*Filed Date:* 05/23/2008.

*Accession Number:* 20080528-0050.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 13, 2008.

*Docket Numbers:* ER98-855-010.

*Applicants:* Wisconsin Electric Power Company.

*Description:* Wisconsin Electric Power Co submits its Revised Rate Schedule to comply with FERC's 4/18/08 Order and Order 697-A.

*Filed Date:* 05/23/2008.

*Accession Number:* 20080528-0093.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 13, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

*Docket Numbers:* OA07-54-005; ER07-1291-004.

*Applicants:* PacifiCorp.

*Description:* PacifiCorp submits revised business practices, in compliance with FERC's 4/28/08 order.

*Filed Date:* 05/28/2008.

*Accession Number:* 20080529-0168.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 18, 2008.

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**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E8-13037 Filed 6-10-08; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Thursday, June 5, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP08-347-001.

*Applicants:* Columbia Gulf Transmission Company.

*Description:* Columbia Gulf Transmission Company submits Substitute Forty Fifth Revised Sheet 18 *et al.* to FERC Gas Tariff, Second Revised Volume 1, to become effective 6/1/08.

*Filed Date:* 06/02/2008.

*Accession Number:* 20080603-0133.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 16, 2008.

*Docket Numbers:* RP08-387-000.

*Applicants:* Hardy Storage Company, LLC.

*Description:* Hardy Storage Submits its Penalty Revenue Credit Report for 2007-2008.

*Filed Date:* 05/23/2008.

*Accession Number:* 20080523-5086.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 11, 2008.

*Docket Numbers:* RP08-397-000.

*Applicants:* Gulf South Pipeline Company, LP.

*Description:* Gulf South Pipeline Company, LP submits a discontinued short-term firm transportation

agreement pursuant to Rate Schedule FTS executed with Constellation Energy Commodities Group, Inc, to become effective 5/29/08.

*Filed Date:* 06/03/2008.

*Accession Number:* 20080603-0135.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 16, 2008.

*Docket Numbers:* CP08-119-001.

*Applicants:* Columbia Gulf Transmission Company.

*Description:* Columbia Gulf Transmission Company submits compliance filing to cancel Rate Schedules X-11 and X-85.

*Filed Date:* 05/27/2008.

*Accession Number:* 20080529-0084.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 12, 2008.

*Docket Numbers:* CP08-54-002.

*Applicants:* Columbia Gulf Transmission Company.

*Description:* Columbia Gulf Transmission Company compliance filing to cancel Dynegy Marketing and Trade capacity entitlements.

*Accession Number:* 20080530-5030.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 12, 2008.

*Docket Numbers:* CP08-55-002.

*Applicants:* Tennessee Gas Pipeline Company.

*Description:* Tennessee Gas Pipeline Company submits Seventeenth Revised Sheet No. 4 *et al.* for inclusion in FERC Gas Tariff, Original Volume No. 2.

*Filed Date:* 05/30/2008.

*Accession Number:* 20080603-0131.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 12, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. E8-13034 Filed 6-10-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

June 3, 2008.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC08-95-000.

*Applicants:* PDI Stoneman, Inc.; Mid-American Power, LLC; DTE Energy Services, Inc.

*Description:* Joint Application of PDI Stoneman, Inc, Mid-American Power, LLC and DTE Energy Services, Inc for authorization of proposed transaction under Section 203 of the Federal Power Act etc.

*Filed Date:* 05/29/2008.

*Accession Number:* 20080603-0035.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 19, 2008.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER01-3001-020.

*Applicants:* New York Independent System Operator, Inc.

*Description:* Semi-Annual 2007 Compliance Report of New York

Independent System Operator, Inc. on Demand Response Programs and New Generation Projects.

*Filed Date:* 06/02/2008.

*Accession Number:* 20080602-5144.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 23, 2008.

*Docket Numbers:* ER05-1056-004; ER06-1548-002.

*Applicants:* Chehalis Power Generating, L.P.

*Description:* Chehalis Power Generating, L.P., Refund Report.

*Filed Date:* 05/30/2008.

*Accession Number:* 20080530-5143.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-552-001.

*Applicants:* Niagara Mohawk Power Corporation.

*Description:* Response to Deficiency Letter of April 30, 2008 of Niagara Mohawk Power Corporation.

*Filed Date:* 05/30/2008.

*Accession Number:* 20080530-5121.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-837-002.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Amendment to Filing of PJM Interconnection, L.L.C.

*Filed Date:* 05/30/2008.

*Accession Number:* 20080530-5114.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-971-001.

*Applicants:* Commonwealth Edison Company, Commonwealth Edison Co. of Indiana, Inc.

*Description:* Commonwealth Edison Company *et al.* submits redlined version of the tariff sheets previously submitted on 5/15/08.

*Filed Date:* 05/30/2008.

*Accession Number:* 20080603-0032.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1020-000.

*Applicants:* The Toledo Edison Company.

*Description:* Toledo Edison Company submits Notice of Cancellation of the Interconnection and Service Agreement Between The Toledo Edison Company and American Municipal Power-Ohio, Inc dated 5/1/89 etc.

*Filed Date:* 05/29/2008.

*Accession Number:* 20080602-0115.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 19, 2008.

*Docket Numbers:* ER08-1024-000.

*Applicants:* Golden Spread Electric Cooperative, Inc.

*Description:* Golden Spread Electric Cooperative, Inc submits its Eighth Informational Filing setting forth

updated fixed costs associated with rates charged for sales of replacement energy pursuant to Rate Schedule 35 etc.

*Filed Date:* 05/30/2008.

*Accession Number:* 20080602-0105.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1025-000.

*Applicants:* The Connecticut Light and Power Company.

*Description:* Connecticut Light and Power Company submits an Amended Interconnection and Operation Agreement by and between designated as Second Revised Service Agreement.

*Filed Date:* 05/30/2008.

*Accession Number:* 20080602-0104.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1026-000.

*Applicants:* FirstEnergy Service Company.

*Description:* FirstEnergy Service Company on behalf of The Cleveland Electric Illuminating Company *et al.* submits Notices of Cancellation of Rate Schedule FERC 26 *et al.*

*Filed Date:* 05/30/2008.

*Accession Number:* 20080602-0103.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1027-000.

*Applicants:* Ameren Services Company.

*Description:* Central Illinois Public Service Company submits an executed service agreement for Wholesale Distribution Service with Wabash Valley Power Association, Inc as agent for Enerstar Electric Cooperative *et al.*

*Filed Date:* 05/30/2008.

*Accession Number:* 20080602-0102.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1029-000.

*Applicants:* Westar Energy, Inc.

*Description:* Westar Energy, Inc submits a Petition for Approval of Settlement Agreement.

*Filed Date:* 05/30/2008.

*Accession Number:* 20080603-0102.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1031-000.

*Applicants:* Westar Energy, Inc.

*Description:* Westar Energy, Inc submits Petition for Approval of Settlement Agreement.

*Filed Date:* 05/30/2008.

*Accession Number:* 20080603-0101.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1035-000.

*Applicants:* Westar Energy, Inc.

*Description:* Westar Energy, Inc submits a Petition for Approval of Settlement Agreement.

*Filed Date:* 05/30/2008.  
*Accession Number:* 20080603-0099.  
*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1036-000.  
*Applicants:* Westar Energy, Inc.  
*Description:* Westar Energy Inc *et al* submit Second Revised Sheet 8 and 1 to the Wholesale Electric Service Agreement dated 12/21/87, designated as First Revised Rate Schedule 250 with the City of Burlingame KS.

*Filed Date:* 05/30/2008.  
*Accession Number:* 20080603-0108.  
*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1037-000.  
*Applicants:* Westar Energy, Inc.  
*Description:* Westar Energy Inc submits Petition for Approval of Settlement Agreement.

*Filed Date:* 05/30/2008.  
*Accession Number:* 20080603-0109.  
*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1039-000.  
*Applicants:* DPL Energy, LLC.  
*Description:* DPL Energy, LLC submits its proposed FERC Electric Tariff, Original Volume 2 and supporting cost data.

*Filed Date:* 05/30/2008.  
*Accession Number:* 20080603-0092.  
*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1040-000.  
*Applicants:* Entergy Services, Inc.  
*Description:* Entergy Operating Companies submits a Notice of Termination of Service Agreement 2 with Hodge Utility Operating Company.

*Filed Date:* 05/30/2008.  
*Accession Number:* 20080603-0091.  
*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1041-000.  
*Applicants:* Entergy Services, Inc.  
*Description:* City of Benton Arkansas *et al* submit First Revised Service Agreement 466 *et al* under FERC Electric Tariff, Third Revised Volume 3.

*Filed Date:* 05/30/2008.  
*Accession Number:* 20080603-0090.  
*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1042-000.  
*Applicants:* Midwest Independent Transmission System.

*Description:* Midwest Independent Transmission System Operator, Inc submits Notice of Cancellation of the 2006 CRSG Agreement etc.

*Filed Date:* 05/30/2008.  
*Accession Number:* 20080603-0088.  
*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1043-000.

*Applicants:* Midwest Independent Transmission System.

*Description:* Midwest Independent Transmission System Operator Inc submits proposed revisions to Section 40.2.22 (Emergency Energy Assistance) and Section 40.3.3.d (Charges and Credits for Midwest ISO Balancing Authority etc).

*Filed Date:* 05/30/2008.  
*Accession Number:* 20080603-0087.  
*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1044-000.  
*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, LLC submits Transmission Service Agreement between PJM and FirstEnergy Solutions Corp on behalf of FirstEnergy Nuclear Generation Corp for Firm Point-to-Point Transmission Service.

*Filed Date:* 05/30/2008.  
*Accession Number:* 20080603-0086.  
*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1045-000.  
*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc submits Service Agreement for Network Integration Transmission Service between SPP as Transmission Provider and Kansas Power Pool as, Network Customer.

*Filed Date:* 05/30/2008.  
*Accession Number:* 20080603-0085.  
*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1046-000.  
*Applicants:* Westar Energy, Inc.

*Description:* Westar Energy, Inc and Kansas Gas and Electric Co submit their Second Revised Sheet 10 and 1 to the Wholesale Electric Service Agreement commencing 2/1/88.

*Filed Date:* 05/30/2008.  
*Accession Number:* 20080603-0089.  
*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1048-000.  
*Applicants:* Westar Energy, Inc.

*Description:* Westar Energy, Inc *et al* submit revised tariff sheets to three existing participation power service agreements with Midwest Energy, Inc etc.

*Filed Date:* 05/30/2008.  
*Accession Number:* 20080603-0110.  
*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1049-000.  
*Applicants:* MidAmerican Energy Company.

*Description:* MidAmerican Energy Company submits a single-issue rate and transmission revenue requirement

adjustment for their Open Access Transmission Tariff, Schedules 7 and 8 and Attachment H as 2nd Rev Sheet 137 *et al*.

*Filed Date:* 05/30/2008.  
*Accession Number:* 20080603-0111.  
*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1052-000.  
*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, LLC submits Transmission Service Agreement between PJM and Orion power Midwest, LP for Firm Point-to-Point Transmission Service pursuant to Part II of the PJM Open Access Tariff etc.

*Filed Date:* 05/30/2008.  
*Accession Number:* 20080603-0113.  
*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1053-000.  
*Applicants:* California Independent System Operator C.

*Description:* California Independent System Operator Corporation submits proposed amendments to their FERC electric tariffs—both currently effective tariff and the MRTU Tariff etc.

*Filed Date:* 05/30/2008.  
*Accession Number:* 20080603-0114.  
*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1054-000.  
*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool Inc submits an executed Service Agreement for Network Integration Transmission Service with Transmission Provider and Kansas Power Pool as Network Customer.

*Filed Date:* 05/30/2008.  
*Accession Number:* 20080603-0115.  
*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* ER08-1055-000.  
*Applicants:* Midwest Independent Transmission System.

*Description:* Midwest Independent Transmission System Operator Inc submits an Amended and Restates Midwest Contingency Reserve Sharing Group Agreement.

*Filed Date:* 05/30/2008.  
*Accession Number:* 20080603-0116.  
*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

*Docket Numbers:* OA07-56-003.  
*Applicants:* MidAmerican Energy Company.

*Description:* MidAmerican Energy Company conform to the Open Access

Transmission Tariff to Order Nos. 890 and 890-A regarding rollover rights as required by paragraph 46 of Order issued April 3, 2008.

*Filed Date:* 06/02/2008.

*Accession Number:* 20080602-5150.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 23, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call

(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E8-13035 Filed 6-10-08; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. PF08-18-000]

#### Weaver's Cove Energy, LLC.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Weaver's Cove Offshore Berth Project, Request for Comments on Environmental Issues, and Notice of Public Meetings

June 4, 2008.

The Federal Energy Regulatory Commission (FERC or Commission) and the U.S. Department of Homeland Security, U.S. Coast Guard (Coast Guard) are in the process of evaluating the Offshore Berth Project planned by Weaver's Cove Energy, LLC (Weaver's Cove). The project would amend the Weaver's Cove LNG Terminal, which was authorized by the FERC on July 15, 2005, and consists of a liquefied natural gas (LNG) import terminal in Fall River, Massachusetts, in Docket No. CP04-36-000. The planned project amendment involves the construction and operation of an offshore LNG import berth (Offshore Berth) in Mount Hope Bay in Massachusetts waters and buried submarine LNG transfer pipelines to the authorized Weaver's Cove LNG Terminal.

As part of this evaluation, the FERC staff will prepare an environmental impact statement (EIS) that will address the environmental impacts of the project. This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the proposed project. Your input will help determine which issues need to be evaluated in the EIS. Please note that the scoping period will close on July 7, 2008.

Comments regarding this project may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. In lieu of or in addition to sending written comments, we invite you to attend the public scoping meetings scheduled as follows:

Date and Time	Location
Tuesday, June 24, 2008, 7:00 p.m. to 9:00 p.m. (EST).	Mount Hope High School Auditorium, 199 Chestnut Street, Bristol, RI 02809.
Wednesday, June 25, 2008, 7:00 p.m. to 9:00 p.m. (EST).	Venus De Milo Restaurant, 75 Grand Army of the Republic Hwy, (Route 6), Swansea, MA 02777.

The Commission will use the EIS in its decision-making process to determine whether or not to authorize the project. The Coast Guard will assess the safety and security of the Offshore Berth Project and issue a Letter of Recommendation. As described above, the FERC staff and the Coast Guard will hold public scoping meetings to allow the public to provide input on these assessments. This notice explains the scoping process that will be used to gather information on the project from public and interested agencies, and summarizes the process that the Coast Guard will use. Your input will help identify the issues that need to be evaluated in the EIS and in the Coast Guard's safety and security assessment.

The FERC will be the lead federal agency for the preparation of the EIS. The Coast Guard will serve as a cooperating agency during preparation of the EIS. The document will satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA). In addition, with this notice, we<sup>1</sup> are asking other federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated Weaver's Cove's proposal relative to their responsibilities. Agencies that would like to request cooperating status should follow the instructions for filing comments described later in this notice. Consultations have already been initiated with the U.S. Army Corps of Engineers, and other state and/or federal agencies. Consultations with these and other agencies will continue throughout the project review and permitting period.

The Massachusetts Energy Facilities Siting Board (MEFSB) is an independent board that licenses major energy facilities in Massachusetts and is charged with ensuring a reliable energy supply for the Commonwealth with a

<sup>1</sup> "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

minimum impact on the environment at the lowest possible cost. The MEFSB has no authority over the siting of interstate natural gas facilities; however, it represents the citizens of Massachusetts before the FERC on cases involving the construction of applicable energy infrastructure in Massachusetts. The public scoping meeting in Swansea, Massachusetts will be a joint scoping meeting with participation by the MEFSB.

This notice is being sent to federal, state, and local government agencies; elected officials; affected landowners (landowners within a half-mile radius of the project facilities); environmental and public interest groups; Native American tribes; commentators and other interested parties; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

### Summary of the Proposed Project

Weaver's Cove proposes to construct and operate an offshore LNG offloading berth and cryogenic LNG transfer pipelines that will transport LNG from tankers with cargo capacities of up to 155,000 cubic meters to an onshore LNG storage tank at the authorized Weaver's Cove LNG Terminal site in Fall River, Massachusetts. More specifically, Weaver's Cove's Offshore Berth Project would consist of:

- An offshore berth jetty approximately 1,200 feet in length including a central platform measuring 250 feet by 125 feet, four mooring dolphins, three breasting dolphins, supporting fender panels, and an unloading platform;
- Three or four 16-inch-diameter unloading arms;
- Two 4.25-mile-long, 24-inch-diameter cryogenic LNG transfer pipelines;
- A vapor generation system located on the jetty consisting of a 20-inch-diameter line connected to a 16-inch-diameter marine arm;
- A new 1,100-yard-long private vessel channel from the federal navigation channel to the Offshore Berth, and a new tanker turning basin totaling 40 acres;
- Ancillary LNG transfer equipment, power substation, emergency generator, uninterruptable power supply, a control room and operating staff facilities; and
- Passive and active security systems to deter and detect attempts at unauthorized access.

The Offshore Berth would provide an alternative to the Weaver's Cove LNG Terminal-side berth which comprises

part of the authorized project that allows for marine access to the Weaver's Cove LNG Terminal. No other aspects of the authorized project (e.g., vessel transit route, LNG terminal, or natural gas pipeline laterals) evaluated under Docket No. CP04-36-000 have been proposed for amendment by Weaver's Cove. Only minor changes to authorized piping and layout, instruments, and the capacity of the boil-off handling system resulting from the proposed amendment would occur at the authorized terminal; therefore, aspects of the authorized project will not be reassessed for the purpose of this amendment. The evaluation of the proposed amendment will focus on the Offshore Berth and buried submarine LNG transfer pipelines.

The Offshore Berth, with a total footprint of approximately 1.0 acre, would be located in the waters of Mount Hope Bay, approximately 1 mile southwest of Brayton Point in Somerset, Massachusetts, and would be approximately 1 mile from the nearest shoreline. The project also includes two 4.25-mile-long cryogenic LNG transfer pipelines, extending along the Taunton River from the Offshore Berth to the previously authorized LNG terminal in Fall River, Massachusetts.

Weaver's Cove has proposed this amendment to address ongoing environmental and safety concerns raised by various stakeholders in regard to the authorized Weaver's Cove LNG Terminal-side berth location. Weaver's Cove states the Offshore Berth Project is a viable alternative to its terminal-side berthing facility because it would alleviate navigation concerns of LNG vessels navigating between the old and new Brightman Street Bridges.

A location map depicting Weaver's Cove's proposed facilities, including its preferred buried submarine transfer line route, is attached to this notice as appendix 1.<sup>2</sup>

### The EIS Process

The NEPA requires the Commission to take into account the environmental impacts that could result from an action when it considers whether or not an LNG import terminal or interstate natural gas pipeline facilities should be approved. The FERC will use the EIS to consider the environmental impacts that

could result if it issues project authorizations to Weaver's Cove under sections 3 and 7 of the Natural Gas Act. The Coast Guard will use the EIS to determine if a Letter of Recommendation should be issued, with or without conditions, under 33 CFR Section 127.009. The NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues and reasonable alternatives. With this notice, the Commission staff is requesting public comments on the scope of the issues to be addressed in the EIS. All comments received will be considered during preparation of the EIS.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. In addition, the Coast Guard, which would be responsible for reviewing the safety and security aspects of the planned project and regulating safety and security if the project is approved, has initiated its review of the project as well.

As part of our pre-filing process review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EIS. In addition, representatives from the FERC participated in public open houses sponsored by Weaver's Cove in the project area on May 19-20, 2008, to explain the environmental review process to interested stakeholders. During June 2008, we will conduct interagency scoping meetings in the project area to solicit comments and concerns about the project from jurisdictional agencies. By this notice, we are formally announcing our preparation of the EIS and requesting additional agency and public comments to help us focus the analysis in the EIS on the potentially significant environmental issues related to the proposed action.

Our independent analysis of the issues will be included in a draft EIS. The draft EIS will be mailed to federal, state, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Indian tribes and regional Native American organizations; commentators; other interested parties; local libraries and newspapers; and the

<sup>2</sup> The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site (<http://www.ferc.gov>) at the "eLibrary" link or from the Commission's Public Reference Room or call (202) 502-8371. For instructions on connecting to eLibrary refer to the end of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

FERC's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. We will consider all comments on the final EIS before we make our recommendations to the Commission. To ensure that your comments are considered, please follow the instructions in the Public Participation section of this notice.

### Coast Guard Letter of Recommendation Process

The Coast Guard is responsible for matters related to navigation safety, vessel engineering and safety standards, and all matters pertaining to the safety of facilities or equipment located in or adjacent to navigable waters up to the last valve immediately before the receiving tanks. The Coast Guard also has authority for LNG facility security plan review, approval, and compliance verification as provided in Title 33 of the Code of Federal Regulations, (CFR) Part 105, and recommendations for siting as it pertains to the management of vessel traffic in and around the LNG facility.

As required by 33 CFR 127.007, Weaver's Cove submitted a Letter of Intent on April 18, 2008 to the Coast Guard Captain of the Port, Southeastern New England, proposing to construct the Offshore Berth in Mount Hope Bay to receive LNG deliveries from tankers transiting portions of Narragansett Bay and Mount Hope Bay. Upon receipt of a Letter of Intent from an owner or operator intending to build a new LNG facility (such as the letter submitted by Weaver's Cove on April 18, 2008), the Coast Guard Captain of the Port conducts an analysis based on:

- The physical location and layout of the facility and its berthing and mooring arrangements;
- The LNG vessels' characteristics and the frequency of LNG shipments to the facility;
- Commercial, industrial, environmentally sensitive, and residential areas in and adjacent to the waterway used by the LNG vessels en route to the facility;
- Density and character of the marine traffic on the waterway;
- Bridges or other man-made obstructions in the waterway;
- Depth of water;
- Tidal range;
- Natural hazards, including rocks and sandbars;
- Underwater pipelines and cables; and

- Distance of berthed LNG vessels from the channel, and the width of the channel.

This analysis results in a Letter of Recommendation issued to the owner or operator and to the state and local governments having jurisdiction, addressing the suitability of the waterway to accommodate LNG vessels, as prescribed by 33 CFR 127.009.

In addition, the Coast Guard will review and approve the facility's operations manual and emergency response plan (33 CFR 127.019), as well as the facility's security plan (33 CFR 105.410). The Coast Guard will also provide input to other federal, state, and local government agencies reviewing the project.

In order to complete a thorough analysis and fulfill the regulatory mandates cited above, Weaver's Cove will be conducting a Waterway Suitability Assessment (WSA), a formal risk assessment evaluating the various safety and security aspects associated with the Offshore Berth Project. Comments received during the public comment period will be considered as input in the risk assessment process. The results of the WSA will be submitted to the Coast Guard to be used in determining whether the waterway is suitable for LNG traffic.

### Currently Identified Environmental Issues

We have already identified issues that we think deserve attention based on a preliminary review of the project area and information on the planned facilities provided by Weaver's Cove. This preliminary list of issues, which is presented below, may be revised based on your comments and our continuing analyses.

- Impact of the Offshore Berth and LNG ship traffic on other Mount Hope Bay users, including fishing and recreational boaters.
- Safety issues relating to LNG ship traffic at the Offshore Berth and cryogenic LNG transfer pipelines.
- Potential impacts on residents in the project area, including safety issues at the offshore berth, noise, air quality, and visual resources.
- Project impacts on marine resources and their associated habitats, including dredging impacts.
- Project impacts on cultural resources.

### Public Participation

You can make a difference by providing us with your specific comments or concerns about the planned Offshore Berth Project. Your comments should focus on the potential

environmental effects, reasonable alternatives (including alternative facility sites and pipeline routes), and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please mail your comments so that they will be received in Washington, DC on or before July 7, 2008, and carefully follow these instructions:

- Send an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of your comments for the attention of Gas Branch 1, DG2E.
- Reference Docket No. PF08-18-000 on the original and both copies.
- Send an additional copy of your letter to:

Selma H. Urman, Esq., Massachusetts Energy Facilities Siting Board, One South Station, Boston, MA 02110.

Your letter to the MEFBSB should also reference Docket No. PF08-18-000.

The public scoping meetings (date, time, and location listed above) are designed to provide another opportunity to offer comments on the planned project. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues that they believe should be addressed in the EIS. A transcript of the meetings will be generated so that your comments will be accurately recorded. In addition, we have asked Weaver's Cove to be available with project location maps to answer project-related questions a half-hour before and after the meetings.

The Commission encourages electronic filing of comments. See Title 18 of the CFR, Part 385.2001(a)(1)(iii) and the instructions on the Commission's internet Web site at <http://www.ferc.gov> under the link to "Documents and Filings" and "eFiling." eFiling is a file attachment process and requires that you prepare your submission in the same manner as you would if filing on paper, and save it to a file on your computer's hard drive. New eFiling users must first create an account by clicking on "Sign up" or "eRegister." You will be asked to select the type of filing you are making. This filing is considered a "Comment on Filing." In addition, there is a "Quick Comment" option available, which is an easy method for interested persons to submit text-only comments on a project. The Quick-Comment User Guide can be viewed at <http://www.ferc.gov/docs-filing/efiling/quick-comment-guide.pdf>.



Quick Comment does not require a FERC eRegistration account; however, you will be asked to provide a valid e-mail address. All comments submitted under either eFiling or the Quick Comment option are placed in the public record for the specified docket or project number(s). We will include all comments that we receive within a reasonable time frame in our environmental analysis of the project.

Once Weaver's Cove formally files its application with the Commission, you may want to become an official party to the proceeding known as an "intervenor." Intervenor play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final decision. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission. Also, you do not need intervenor status to have your environmental comments considered.

#### Environmental Mailing List

If you wish to remain on our environmental mailing list and receive future mailings, please return the attached Mailing List Form (appendix 2 of this notice). Also, indicate on the form your preference for receiving a paper version in lieu of an electronic version of the EIS on CD-ROM. If you do not return this form, we will remove your name from the Commission's environmental mailing list.

#### Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC (3372) or on the FERC Internet Web site (<http://www.ferc.gov>) using the "eLibrary link." Click on the eLibrary link, select "General Search" and enter the project docket number excluding the last three digits (i.e., PF08-18) in the "Docket Number" field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1-866-208-3676, TTY (202) 502-8659, or by e-mail at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov). The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to <http://www.ferc.gov/esubscribenow.htm>.

Public meetings or site visits will be posted on the Commission's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx> along with other related information.

Finally, Weaver's Cove has established an Internet Web site for this project at <http://www.weaverscove.com/>. The Web site includes a project overview, status, potential impacts and mitigation, and answers to frequently-asked questions.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8-13025 Filed 6-10-08; 8:45 am]

BILLING CODE 6717-01-P

#### DEPARTMENT OF ENERGY

##### Federal Energy Regulatory Commission

[Docket No. EL08-39-000]

##### New York Regional Interconnect, Inc.; Notice of Filing

June 4, 2008.

Take notice that on May 28, 2008, New York Regional Interconnect, Inc. filed its response to the Commission's May 13, 2008 request for additional information and clarification of its February 12, 2008, Petition of Declaratory Order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the

"eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on June 11, 2008.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8-13028 Filed 6-10-08; 8:45 am]

BILLING CODE 6717-01-P

#### DEPARTMENT OF ENERGY

##### Federal Energy Regulatory Commission

[Docket No. PR08-24-000]

##### Dow Intrastate Gas Company; Notice of Petition for Rate Approval

June 4, 2008.

Take notice that on May 30, 2008, Dow Intrastate Gas Company filed with the Federal Energy Regulatory Commission (Commission) a petition pursuant to section 284.123(b)(2) of the Commission's regulations requesting that the Commission approve its proposed rates for transportation service being provided pursuant to section 311(a)(2) of the NGPA.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant.



Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E8-13026 Filed 6-10-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. PR08-25-000]

#### Kinder Morgan Texas Pipeline LLC; Notice of Petition for Rate Approval

June 4, 2008.

Take notice that on May 30, 2008, Kinder Morgan Texas Pipeline LLC (KMTP) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's regulations. KMTP requests that the Commission approve market-based rates for firm and interruptible storage services provided at its North Dayton Gas Storage Facility, located in Liberty County, Texas and at its Markham Gas Storage Facility located in Matagorda County, Texas commencing on May 30, 2008.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern time Friday, June 20, 2008.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E8-13027 Filed 6-10-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. PR08-26-000]

#### Washington 10 Storage Corporation; Notice of Petition for Rate Approval

June 4, 2008.

Take notice that on May 30, 2008, Washington 10 Storage Corporation (Washington 10) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's regulations. Washington 10 requests that the Commission approve market-based rates for firm and interruptible storage service, firm and interruptible park and loan service and hub services consisting

of interruptible wheeling and title transfer at its facilities located in Washington Township, Michigan, commencing on May 30, 2008.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E8-13023 Filed 6-10-08; 8:45 am]

BILLING CODE 6717-01-P

**ENVIRONMENTAL PROTECTION AGENCY****[EPA-HQ-OPP-2008-0255; FRL-8364-9]****Agency Information Collection Activities; Proposed Collection; Comment Request; Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides; EPA ICR No. 0161.11, OMB Control No. 2070-0027****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: "Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides" and identified by EPA ICR No. 0161.11 and OMB Control No. 2070-0027, is scheduled to expire on February 28, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

**DATES:** Comments must be received on or before August 11, 2008.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2008-0255, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

**Instructions:** Direct your comments to docket ID number EPA-HQ-OPP-2008-0255. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless

the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the docket index available in [regulations.gov](http://www.regulations.gov). To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:**

Nathanael R. Martin, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-

0001; telephone number: (703) 305-6475; fax number: (703) 305-5884; e-mail address: [martin.nathanael@epa.gov](mailto:martin.nathanael@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. What Information is EPA Particularly Interested in?**

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

**II. What Should I Consider when I Prepare My Comments for EPA?**

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline identified under **DATES**.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response.

You may also provide the name, date, and **Federal Register** citation.

### III. What Information Collection Activity or ICR Does this Action Apply to?

**Affected entities:** Entities potentially affected by this action are a business engaged in the manufacturing of pesticides and other agricultural chemicals. Potentially affected entities may include, but are not limited to: Manufacturers of pesticides and other agricultural chemicals (NAICS code 325320), e.g., exporters of unregistered pesticide products. This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 168.75.

**Title:** Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides.

**ICR numbers:** EPA ICR No. 0161.11, OMB Control No. 2070-0027.

**ICR status:** This ICR is currently scheduled to expire on February 28, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

**Abstract:** This information collection program is designed to enable EPA to provide notice to foreign purchasers of unregistered pesticides exported from the United States that the pesticide product cannot be sold in the United States. Section 17(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires an exporter of any pesticide not registered under FIFRA section 3 or sold under FIFRA section 6(a)(1) to obtain a signed statement from the foreign purchaser acknowledging that the purchaser is aware that the pesticide is not registered for use in, and cannot be sold in, the United States. A

copy of this statement must be transmitted to an appropriate official of the government in the importing country. The purpose of the purchaser acknowledgment statement requirement is to notify the government of the importing country that a pesticide judged hazardous to human health or the environment, or for which no such hazard assessment has been made, will be imported into that country. This information is submitted in the form of annual or per shipment statements to EPA, which maintains original records and transmits copies thereof to appropriate government officials of the countries which are importing the pesticides.

**Burden statement:** The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.06 hours (around 65 minutes) per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

*Estimated total number of potential respondents:* 2,500.

*Frequency of response:* Annual or per shipment.

*Estimated total average number of responses for each respondent:* 1-2.

*Estimated total annual burden hours:* 24,492 hours.

*Estimated total annual costs:* \$1,574,306.

### IV. Are There Changes in the Estimates from the Last Approval?

There is a decrease of 208 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects the average annual number of respondents per calendar year from 2005-2007. The decrease in annual reporting and recordkeeping cost is an adjustment that reflects the

Agency's new estimates of wages, benefits, and overhead for all labor categories for affected industries, state government, and EPA employees. This change is an adjustment.

### V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

### List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: June 2, 2008.

**James B. Gulliford,**

*Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. E8-13006 Filed 6-10-08; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2003-0200; FRL-8368-2]

### Fenamiphos; Amendment to Use Deletion and Product Cancellation Order

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's amendment to the order for the cancellation of products, voluntarily requested by the registrant and accepted by the Agency, of products containing the pesticide fenamiphos, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This amendment follows a December 10, 2003 **Federal Register** Use Deletion and Product Cancellation Order which approved the voluntary request submitted by Bayer Corporation to cancel all registrations for products containing the active ingredient fenamiphos. These are the last fenamiphos products registered for use in the United States. The December 10, 2003 order prohibited the sale and distribution of fenamiphos products by persons other than the registrant after

May 31, 2008. The sole technical registrant for fenamiphos, Bayer Environmental Science, subsequently requested that the Agency extend the May 31, 2008 deadline for Nemacur 10% Turf and Ornamental Nematicide (EPA Reg. No. 432-1291) and Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide (EPA Reg. No. 264-731). The Agency will extend the deadline for persons other than the registrant to sell and distribute Nemacur 10% Turf and Ornamental Nematicide as well as Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide until November 30, 2008.

**DATES:** This amendment is effective June 11, 2008.

**FOR FURTHER INFORMATION CONTACT:** Eric Miederhoff, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 347-8028; fax number: (703) 308-7070; e-mail address: [miederhoff.eric@epa.gov](mailto:miederhoff.eric@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2003-0200. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr>.

**II. What Action is the Agency Taking?**

This notice announces the amendment of the December 10, 2003 use deletion and product cancellation order of fenamiphos products registered under section 3 of FIFRA. The affected registrations are listed by registration number in Table 1 of this unit.

TABLE 1.—FENAMIPHOS PRODUCTS AFFECTED

EPA Registration Number	Product Name
432-1291	Nemacur 10% Turf and Ornamental Nematicide
264-731	Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide

Table 2 of this unit includes the name and address of record for the registrant of the product in Table 1 of this unit, by EPA company number.

TABLE 2.—REGISTRANT OF AFFECTED PRODUCTS

EPA Company Number	Company Name and Address
432	Bayer Environmental Science, 2 T.W. Alexander Drive, PO Box 12014, Research Triangle Park, NC 27709
264	Bayer CropScience, 2 T.W. Alexander Drive, PO Box 12014, Research Triangle Park, NC 27709

On December 10, 2003, EPA published a Use Deletion and Product Cancellation Order (FRL-7332-5) (68 FR 68901). The order prohibited, among other things, the manufacture and distribution of fenamiphos by Bayer Corporation, the sole technical ingredient registrant, after May 31, 2007. The deadline established for Bayer Corporation followed a production cap on the manufacture of fenamiphos, which limited fenamiphos production to 500,000 pounds of active ingredient for the year ending May 31, 2003, and reduced production by 20% each subsequent year during the 5 year phase-out period. The order also prohibited the sale and distribution of

fenamiphos by persons other than the registrant after May 31, 2008.

In a letter dated May 22, 2008, the sole fenamiphos technical registrant, Bayer Environmental Science, requested an extension of the May 31, 2008 deadline through the current application season, until December 31, 2008. The letter stated that due to economic constraints, end-users are delaying purchase of this product until they are ready to actually make an application.

In the case of fenamiphos, the original May 31, 2008 deadline was established to provide a reasonable amount of time for the material to work through the channels of trade following the cessation of sale and distribution of fenamiphos products by the registrant, Bayer Environmental Science, on May 31, 2007. Extending the deadline for distributors to sell and distribute Nemacur 10% Turf and Ornamental Nematicide and Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide, will neither conflict with the Agency's application of the guidelines outlined in PR Notice 97-7, nor will it introduce more fenamiphos into the pesticide use cycle than had been stipulated by the terms of the five year phase-out.

Allowing additional time for distributors to sell the Nemacur 10% and Nemacur 3 to end users will ensure that this product is utilized safely, in accordance with the approved labeling requirements. Today's action extends the deadline for persons other than the registrant to sell and distribute Nemacur 10% Turf and Ornamental Nematicide (EPA Reg. No. 432-1291) and Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide (EPA Reg. No. 264-731) for six months, until November 30, 2008. End users with existing stocks of products containing fenamiphos may continue to use these products until their stocks are exhausted, provided that the use complies with EPA-approved product label requirements for the respective products.

**III. Amended Order**

Pursuant to FIFRA section 6(a), EPA hereby amends the December 10, 2003 order to allow persons other than the registrant to sell and distribute the fenamiphos product identified in Table 1 of Unit II., until November 30, 2008. Specifically, the Agency hereby amends the December 10, 2003 order to prohibit the sale and distribution of products containing fenamiphos, provided, however, that persons other than the registrant are permitted to sell and distribute existing stocks of Nemacur 10% Turf and Ornamental Nematicide (EPA Reg. No. 432-1291) and Nemacur

3 Emulsifiable Systemic Insecticide-Nematicide (EPA Reg. No. 264-731) until November 30, 2008. The Agency further amends the December 10, 2003 order to provide that end users with existing stocks of products containing fenamiphos may continue to use these products until their stocks are exhausted, provided that the use complies with EPA-approved product label requirements for the respective products.

#### IV. What is the Agency's Authority for Taking this Action?

Section 6(a)(1) of FIFRA provides that the Administrator may permit the continued sale and use of existing stocks of a pesticide whose registration is suspended or canceled under this section, or section 3 or 4, to such extent, under such conditions, and for such uses as the Administrator determines that such sale or use is not inconsistent with the purposes of this Act.

#### List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 30, 2008.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8-13003 Filed 6-10-08; 8:45 am]

BILLING CODE 6560-50-S

#### ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2008-0442; FRL-8366-8]

#### Diflubenzuron; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the U.S. Department of Agriculture, Animal and Plant Health Inspection Service to use the pesticide diflubenzuron (CAS No. 35367-38-5) to treat up to 3,000 acres of alfalfa to control grasshoppers and mormon crickets. The applicant proposes a use which is supported by the IR-4 program and has been requested in 5 or more previous years, and a petition for tolerance has not yet been submitted to the Agency.

**DATES:** Comments must be received on or before June 26, 2008.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2008-0442, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

*Instructions:* Direct your comments to docket ID number EPA-HQ-OPP-2008-0442. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index available in [www.regulations.gov](http://www.regulations.gov). To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [www.regulations.gov](http://www.regulations.gov)

website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

#### FOR FURTHER INFORMATION CONTACT:

Libby Pemberton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9364; fax number: (703) 605-0781; e-mail address: [pemberton.libby@epa.gov](mailto:pemberton.libby@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

##### B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through

www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

## II. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA/APHIS) has requested the Administrator to issue a specific exemption for the use of diflubenzuron on alfalfa to control grasshoppers and Mormon crickets. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that use of diflubenzuron is requested to protect pollinators of Spalding's catchfly, a threatened plant species endemic to the proposed treatment area in Montana. The U.S. Fish and Wildlife Service's recovery plan for Spalding's catchfly recommends that grasshopper control programs avoid the use of broad spectrum insecticides (such as carbaryl and malathion) that will affect native bee species. Since diflubenzuron is not registered for use on alfalfa, current USDA/APHIS policy is to include a 500-foot buffer around these fields during application to insure no residues occur on alfalfa. Since the alfalfa fields are interspersed within the rangeland spray block, the resulting treatments will create several untreated areas that will allow grasshoppers to disperse from untreated alfalfa fields and buffer strips into previously treated areas and also damage untreated alfalfa hay.

The Applicant proposes the use of diflubenzuron on 3,000 acres alfalfa in Montana to control grasshoppers and Mormon crickets. The proposed areas for treatment are alfalfa fields that are contained within larger application blocks of rangeland on, or adjacent to, the Flathead Reservation. The Flathead Reservation is located in Sanders, Lake, Flathead and Missoula Counties in Montana. Applications will occur primarily on the Flathead Nation near Irvine Flats in Sanders county Montana. The area is primarily rangeland with some production of alfalfa grown under irrigation. Aerial applications will be made using fixed wing aircraft making broadcast applications or by using Reduced Area Agent Treatments (RAAT). This method uses alternating swath applications to the spray block providing effective control while reducing environmental loading. The rate of application is 0.016 lb active ingredient (ai) per acre at the full rate and 0.012 lb active ingredient per acre using the RAAT. One application of a 22% ai product will be made between May and September 2008. A maximum of a 48 lb. ai will be applied.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing a use which is supported by the IR-4 program and has been requested in 5 or more previous years, and a petition for tolerance has not yet been submitted to the Agency.

The Agency, will review and consider all comments received during the comment period in determining

whether to issue the specific exemption requested by the USDA/APHIS.

## List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 28, 2008.

**Lois A. Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. E8-13002 Filed 6-10-08; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8578-3]

### EPA Office of Children's Health Protection and Environmental Education Staff Office; Notice of Public Meetings for the National Environmental Education Advisory Council

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of meetings.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA or Agency) Office of Children's Health Protection and Environmental Education Office hereby gives notice that the National Environmental Education Advisory Council will hold public meetings by conference call on the 2nd Wednesday of each month, beginning with July 9, 2008 from 3 p.m. to 4 p.m. All times noted are Eastern time. The purpose of these meetings is to provide the Council with the opportunity to advise the Environmental Education Division on its implementation of the National Environmental Protection Act of 1990. Requests for the draft agenda will be accepted up to 1 business day before the meeting.

**DATES:** This notice is applicable for the following dates:

- July 9, 2008
- August 13, 2008
- September 10, 2008
- October 8, 2008
- November 12, 2008
- December 10, 2008

## SUPPLEMENTARY INFORMATION:

Participation in the conference calls will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the call from Ginger Potter, the Designated Federal Officer, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Any member of the public interested in receiving a draft meeting agenda may

contact Ginger Potter via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section below.

**FOR FURTHER INFORMATION CONTACT:** For information regarding this Notice, please contact Ms. Ginger Potter, Designated Federal Officer (DFO), EPA National Environmental Education Advisory Council, at [potter.ginger@epa.gov](mailto:potter.ginger@epa.gov) or (202) 564-0453. General information concerning NEEAC can be found on the EPA Web site at: <http://www.epa.gov/enviroed>. For information on access or services for individuals with disabilities, please contact Ginger Potter as directed above. To request accommodation of a disability, please contact Ginger Potter, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: June 5, 2008.

**Ginger Potter,**

*Designated Federal Officer.*

[FR Doc. E8-13069 Filed 6-10-08; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2008-0203; FRL-8366-1]

### Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions were granted during the period January 1, 2008 through March 31, 2008, to control unforeseen pest outbreaks.

**FOR FURTHER INFORMATION CONTACT:** See each emergency exemption for the name of a contact person. The following information applies to all contact persons: Team Leader, Emergency Response Team, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9366.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or

pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions listed in this unit. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the emergency exemption of interest.

##### B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2008-0203. Publicly available docket materials are available either electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr>.

##### II. Background

EPA has granted emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific.

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A “specific exemption” authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. “Quarantine” and “public health” exemptions are a particular form of specific exemption issued for quarantine or public health purposes. These are rarely requested.

3. A “crisis exemption” is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in “a reasonable certainty of no harm” to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the “reasonable certainty of no harm standard” of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency that granted the exemption, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

### III. Emergency Exemptions: U.S. States and Territories

#### Arkansas

State Plant Board

*Specific exemption:* EPA authorized the use of chlorantraniliprole on rice, seed to control rice water weevil; March 21, 2008 to July 31, 2008. Contact: Marcel Howard.

#### California

Environmental Protection Agency, Department of Pesticide Regulation

*Specific exemption:* EPA authorized the use of maneb on walnuts to control bacterial blight (*Xanthomonas campestris* pv. *Juglandis*); February 27, 2008 to June 15, 2008. Contact: Libby Pemberton.

EPA authorized the use of tebuconazole on garlic to control garlic rust (*Puccinia porri* - *P. allii*); March 5, 2008 to July 3, 2008. Contact: Libby Pemberton.



EPA authorized the use of abamectin on large lima beans to control spider mites; March 6, 2008 to August 31, 2008. Contact: Andrew Ertman.

**Quarantine exemption:** EPA authorized the use of Environ LpH on hard surfaces, items, and laboratory waste solutions to control prions; March 26, 2008 to March 26, 2011. Contact: Princess Campbell.

#### Delaware

Department of Agriculture

**Specific exemption:** EPA authorized the use of thiophanate-methyl on mushroom to control green mold; January 14, 2008 to January 14, 2009. Contact: Andrea Conrath.

#### Florida

Department of Agriculture and Consumer Services

**Specific exemption:** EPA authorized the use of thiophanate-methyl on citrus to control postbloom fruit drop and stem-end rot; March 19, 2008 to March 19, 2009. Contact: Andrea Conrath.

#### Louisiana

Department of Agriculture and Forestry  
**Specific exemption:** EPA authorized the use of chlorantraniliprole on rice, seed to control rice water weevil; February 5, 2008 to July 31, 2008. Contact: Marcel Howard.

EPA authorized the use of etofenprox on water-seeded rice to control rice water weevil (*Lissorhoptrus oryzophilus*); February 20, 2008 to August 1, 2008. Contact: Libby Pemberton.

#### Maryland

Department of Agriculture

**Specific exemption:** EPA authorized the use of thiophanate-methyl on mushroom to control green mold; January 14, 2008 to January 14, 2009. Contact: Andrea Conrath.

#### Minnesota

Department of Agriculture

**Specific exemption:** EPA authorized the use of azoxystrobin on wild rice to control stem rot (*Nakataea sigmoidea/Sclerotium oryzae*); March 10, 2008 to August 31, 2008. Contact: Libby Pemberton.

#### Mississippi

Department of Agriculture and Commerce

**Specific exemption:** EPA authorized the use of chlorantraniliprole on rice, seed to control rice water weevil; March 21, 2008 to July 31, 2008. Contact: Marcel Howard.

**Crisis:** On March 31, 2008, for the use of anthraquinone on corn, field and

sweet seed to control blackbird species and grackle. This program ended on May 10, 2008. Contact: Marcel Howard.

#### Missouri

Department of Agriculture

**Specific exemption:** EPA authorized the use of chlorantraniliprole on rice, seed to control rice water weevil; March 21, 2008 to July 31, 2008. Contact: Marcel Howard.

#### Nevada

Department of Agriculture

**Specific exemption:** EPA authorized the use of bifenazate on timothy to control banks grass mite; March 31, 2008 to September 1, 2008. Contact: Andrea Conrath.

#### Oklahoma

Department of Agriculture

**Crisis:** On March 24, 2008, for the use of pendimethalin on Bermuda grass pastures and hayfields to control *sand bur spp.* This program ended on April 8, 2008. Contact: Stacey Groce.

#### Oregon

Department of Agriculture

**Specific exemption:** EPA authorized the use of sulfentrazone on strawberries to control broadleaf weeds; March 15, 2008 to February 28, 2009. Contact: Andrew Ertman.

EPA authorized the use of fenoxaprop-*P*-ethyl on grasses grown for seed to control annual grass weeds; February 28, 2008 to September 15, 2008. Contact: Andrea Conrath.

#### Pennsylvania

Department of Agriculture

**Specific exemption:** EPA authorized the use of thiophanate-methyl on mushroom to control green mold; January 8, 2008 to January 8, 2009. Contact: Andrea Conrath.

#### Texas

Department of Agriculture

**Specific exemption:** EPA authorized the use of anthraquinone on corn, field, and sweet, seed to control sandhill crane; February 7, 2008 to July 31, 2008. Contact: Marcel Howard.

EPA authorized the use of chlorantraniliprole on rice, seed to control rice water weevil; February 14, 2008 to July 1, 2008. Contact: Marcel Howard.

**Crisis:** On February 4, 2008, for the use of pendamethalin on Bermuda grass pastures and hayfields to control *sand bur spp.* This program is expected to end on May 31, 2008. Contact: Stacey Groce.

#### Washington

Department of Agriculture

**Specific exemption:** EPA authorized the use of sulfentrazone on strawberries to control broadleaf weed; February 19, 2008 to February 28, 2009. Contact: Andrew Ertman.

#### Wisconsin

Department of Agriculture, Trade, and Consumer Protection

**Specific exemption:** EPA authorized the use of sulfentrazone on strawberries to control broadleaf weeds; June 20, 2008 to December 15, 2008. Contact: Andrew Ertman.

#### List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 29, 2008.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. E8-13011 Filed 6-10-08; 8:45 am]

BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8578-2]

### Proposed Consent Decree, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Proposed Consent Decree; Request for Public Comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, to address a lawsuit filed by Desert Rock Energy Company, LLC and Dine Power Authority (collectively, "Plaintiffs") in the United States District Court for the Southern District of Texas: *Desert Rock Energy Company, LLC, et al. v. EPA*, No. 08-872 (S.D. TX). On March 21, 2008, Plaintiffs served upon the United States a Complaint alleging that EPA failed to perform a mandatory duty under Clean Air Act section 165(c), 42 U.S.C. 7475(c), to take action on Plaintiffs' application ("Permit Application") for a Prevention of Significant Deterioration permit to construct a coal-fired power plant on land held by the United States government in trust for the benefit of the Navajo Nation. Under the terms of the proposed consent decree, by July 31, 2008, EPA shall issue a final permit decision on the Permit Application, within the meaning of 40 CFR 124.15(a).



**DATES:** Written comments on the proposed consent decree must be received by *July 11, 2008*.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-HQ-OGC-2008-0488, online at <http://www.regulations.gov> (EPA's preferred method); by e-mail to [oei.docket@epa.gov](mailto:oei.docket@epa.gov); mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** Brian Doster, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564-1932; fax number (202) 564-5603; e-mail address: [doster.brian@epa.gov](mailto:doster.brian@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Additional Information About the Proposed Consent Decree**

The proposed consent decree would resolve the suit filed by the Plaintiffs alleging that EPA has a mandatory duty under Clean Air Act section 165(c), 42 U.S.C. 7475(c), to take action on Plaintiffs' application ("Permit Application") for a Prevention of Significant Deterioration ("PSD") permit to construct a coal-fired power plant on land held by the United States government in trust for the benefit of the Navajo Nation. No later than July 31, 2008, EPA shall issue a final permit decision on the Permit Application, within the meaning of 40 CFR 124.15(a). EPA Region IX is the reviewing authority for the Permit Application. Background on the Permit Application and Region IX's review may be obtained on the following Web site: <http://www.epa.gov/region09/air/permit/desertrock/index.html>.

The consent decree becomes final and effective after EPA provides notice in the **Federal Register** and provides an opportunity for public comment pursuant to Clean Air Act section 113(g). For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were

not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

**II. Additional Information About Commenting on the Proposed Consent Decree**

*A. How Can I Get a Copy of the Consent Decree?*

Direct your comments to the official public docket for this action under Docket ID No. EPA-HQ-OGC-2008-0488 which contains a copy of the consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through <http://www.regulations.gov>. You may use the <http://www.regulations.gov> Web site to review the consent decree, submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at <http://www.regulations.gov> without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material

contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

*B. How and To Whom Do I Submit Comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD-ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <http://www.regulations.gov> Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through <http://www.regulations.gov>, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: June 5, 2008.

**Richard B. Ossias,**  
*Associate General Counsel.*

[FR Doc. E8-13064 Filed 6-10-08; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-8577-8]

**Proposed Settlement Agreement, Clean Air Act Citizen Suit****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of Proposed Settlement Agreement; Request for Public Comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, to address a lawsuit filed by Sierra Club and the American Bottom Conservancy (collectively "Plaintiffs") in the U.S. District Court Northern District of Illinois: *Sierra Club v. Johnson*, Case No. 06-CV-4000 (N.D. Ill.). Plaintiffs filed a complaint alleging that EPA failed to perform a nondiscretionary duty under Clean Air Act section 505(c), 42 U.S.C. 7661d(c), to issue by May 2, 2006, an operating permit for the Veolia hazardous waste incinerator located in Sauget, Illinois ("the Facility"). Under the terms of the proposed settlement agreement, by July 18, 2008, EPA would either issue a decision denying an operating permit for the Facility or complete the public participation process for a draft operating permit. If EPA does not issue a decision denying an operating permit for the Facility then, by September 12, 2008, EPA would either issue a final operating permit for the Facility or issue a final decision denying the operating permit. Further, under the terms of the proposed settlement agreement, EPA would pay Plaintiffs a specified amount in settlement for attorneys' fees in this matter.

**DATES:** Written comments on the proposed settlement agreement must be received by July 11, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-HQ-OGC-2008-0310, online at <http://www.regulations.gov> (EPA's preferred method); by e-mail to [oei.docket@epa.gov](mailto:oei.docket@epa.gov); mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special

characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** David Orlin, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564-1222; fax number (202) 564-5603; e-mail address: [orlin.david@epa.gov](mailto:orlin.david@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Additional Information About the Proposed Settlement Agreement**

Plaintiffs filed a complaint alleging that EPA failed to perform a nondiscretionary duty under Clean Air Act section 505(c), 42 U.S.C. 7661d(c), to issue by May 2, 2006, a title V operating permit for the Veolia hazardous waste incinerator located in Sauget, Illinois ("the Facility") under 40 CFR Part 71. Under the terms of the proposed settlement agreement, by July 18, 2008, EPA would either issue a decision denying an operating permit for the Facility or complete the public participation process for a draft operating permit under 42 U.S.C. 7661d(c) and 40 CFR Part 71. If EPA does not issue a decision denying an operating permit for the Facility then, by September 12, 2008, EPA would either issue a final operating permit for the Facility or issue a final decision denying the operating permit under 42 U.S.C. 7661d(c) and 40 CFR Part 71. EPA also will pay a specified amount to Plaintiffs to settle their claims for attorneys' fees.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

**II. Additional Information About Commenting on the Proposed Settlement****A. How Can I Get a Copy of the Settlement Agreement?**

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2008-0310) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through <http://www.regulations.gov>. You may use the <http://www.regulations.gov> Web site to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at <http://www.regulations.gov> without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

**B. How and To Whom Do I Submit Comments?**

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment

period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD-ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <http://www.regulations.gov> Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through <http://www.regulations.gov>, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: June 2, 2008.

**Richard B. Ossias,**  
Associate General Counsel.

[FR Doc. E8-13090 Filed 6-10-08; 8:45 am]

**BILLING CODE 6560-50-P**

## FARM CREDIT SYSTEM INSURANCE CORPORATION

### Farm Credit System Insurance Corporation Board; Regular Meeting

**SUMMARY:** Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

**DATES AND TIME:** The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 10, 2008, from 10 a.m.

until such time as the Board concludes its business.

#### FOR FURTHER INFORMATION CONTACT:

Roland E. Smith, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883-4009, TTY (703) 883-4056.

**ADDRESSES:** Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

#### Open Session

##### A. Approval of Minutes

- March 13, 2008.

##### B. Business Reports

- FCSIC Financial Report.
- Report on Insured Obligations.
- Quarterly Report on Annual

#### Performance Plan.

##### C. New Business

- Mid-Year Review of Insurance

#### Premium Rates.

#### Closed Session

- FCSIC Report on System

#### Performance.

Dated: June 6, 2008.

**Roland E. Smith,**

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. E8-13076 Filed 6-10-08; 8:45 am]

**BILLING CODE 6710-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[DA 08-1058 and DA 08-1320]

### Consumer Advisory Committee

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission announces the appointment of one (1) additional member to the Consumer Advisory Committee ("Committee") and further announces the date and agenda of the Committee's next meeting.

**DATES:** The next meeting of the Committee will take place on Friday, June 27, 2008, 9 a.m. to 4 p.m., at the Commission's Headquarters Building, Room TW-C305, 445 12th Street, SW., Washington, DC 20554.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Scott Marshall, Consumer &

Governmental Affairs Bureau, (202) 418-2809 (voice), (202) 418-0179 (TTY), or e-mail [scott.marshall@fcc.gov](mailto:scott.marshall@fcc.gov).

**SUPPLEMENTARY INFORMATION:** On May 2, 2008, the Commission released Public Notice DA 08-1058, announcing the appointment of one (1) additional Committee member: American Council of the Blind represented by Eric Bridges. This appointment is effective immediately and shall terminate November 17, 2008 or when the Committee is terminated, whichever is earlier. On June 4, 2008, the Commission released Public Notice DA 08-1320, which announced the agenda, date and time of the Committee's next meeting.

At its June 27, 2008 meeting, the Committee will continue its consideration of DTV transition issues. The Committee will also consider recommendations regarding broadband/universal service, relay services and the provision of auditory access to televised programming containing emergency information. The Committee may also consider other consumer issues within the jurisdiction of the Commission. A limited amount of time on the agenda will be available for oral comments from the public.

The Committee is organized under and operates in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2 (1988). The meeting is open to the public. Members of the public may address the Committee or may send written comments to: Scott Marshall, Designated Federal Officer of the Committee, at the address indicated on the first page of this document.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, assistive listening devices, and Braille copies of the agenda and handouts will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Federal Communications Commission.

**Catherine W. Seidel,**

Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. E8-13116 Filed 6-10-08; 8:45 am]

**BILLING CODE 6712-01-P**

**FEDERAL MARITIME COMMISSION****Notice of Agreements Filed**

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Web site (<http://www.fmc.gov>) or by contacting the Office of Agreements ((202) 523-5793 or [tradeanalysis@fmc.gov](mailto:tradeanalysis@fmc.gov)).

*Agreement No.:* 011830-007.

*Title:* CMA CGM-HL-APL Indamex Cross Space Charter, Sailing and Cooperative Working Agreement.

*Parties:* APL Co. PTE Ltd./American President Lines, Ltd.; CMA CGM, S.A.; and Hapag-Lloyd AG.

*Filing Party:* Wayne R. Rohde, Esq., Sher & Blackwell, LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

*Synopsis:* The amendment would add Nippon Yusen Kaisha and Orient Overseas container Line Limited as parties to the agreement; reflect the withdrawal of APL Co. PTE Ltd. as a party to the agreement after the first service cycle; reduce the geographic scope in SE Asia; amend the duration of the agreement; and rename and restate the agreement reflecting other miscellaneous changes.

*Agreement No.:* 012046.

*Title:* MSC/Hapag-Lloyd Space Charter Agreement.

*Parties:* Hapag-Lloyd AG; and Mediterranean Shipping Co. S.A. ("MSC").

*Filing Party:* Wayne R. Rohde, Esq., Sher & Blackwell LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

*Synopsis:* The agreement would authorize MSC to charter space to Hapag-Lloyd in the trade between U.S. Atlantic and Gulf Coasts and ports in Bahamas, the Dominican Republic, Mexico, Argentina, Brazil, Uruguay and Venezuela.

By order of the Federal Maritime Commission.

Dated: June 6, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8-13082 Filed 6-10-08; 8:45 am]

BILLING CODE 6730-01-P

**FEDERAL MARITIME COMMISSION****Ocean Transportation Intermediary License; Applicants**

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

**Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants**

Anchor Logistix (Canada) Ltd. dba Anchor Logistix 9USA) Ltd., 1030 Kamato Rd., #206, Mississauga, ON L4W 4B6, Canada. Officer: Mylai Balakrishnan Karthik, Director, (Qualifying Individual).

A Way To Move, Inc., 304 Tejon Place, Palos Verdes, CA 90274. Officer: Alex Knowles, President, (Qualifying Individual).

Korchina Logistics USA, Inc., 550 E. Carson Plaza Drive, Ste. 206, Carson, CA 90746. Officers: Jong K. Park, CFO, (Qualifying Individual), Eric EK Sun, President.

Map Cargo Global Logistics, 2551 Santa Fe Ave., Redondo Beach, CA 90278. Officer: Marek A. Panaseqiz, President, (Qualifying Individual).

Atlantic Consolidators, Inc., 10880 NW 27th Street, Ste. 200, Miami, FL 33172. Officer: Ali A. Germi, President, (Qualifying Individual).

**Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant**

IAL Container Line (USA) Inc., 55 Madison Avenue, Ste. 400—Rm. 9, Morristown, NJ 07960. Officers: Jitendra P. Shah, Vice President, (Qualifying Individual), Ashwin Pandya, President.

Selim Logistics System USA, Inc., 777 Mark Street, #107, Wood Dale, IL 60191. Officer: Young E. Lee, Treasurer, (Qualifying Individual). Trans Atlantic Freight Forwarders, Inc., 829 S. Dixie Highway, Lake Worth, FL 33460. Officers: Osmo Sikanen, President, (Qualifying Individual), Eila Sikanen, Vice President.

Jo-Sak USA Inc., 3300 Arapahoe Avenue, Boulder, CO 80303. Officer: Pauline Vaghiayan, President, (Qualifying Individual).

A & S Shipping Company, Inc., 7231 NW 54 Street, Miami, FL 33166. Officers: Ana Hernandez, Treasurer, (Qualifying Individual), Sherlly A. Brache, President.

**Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant**

APM Global Logistics USA Inc., Giralda Farms, Madison Ave., P.O. Box 880, Madison, NJ 07940-0880. Officer: Nick Fafoutis, Sen. Dir. Area Sales Manager, (Qualifying Individual).

Dated: June 6, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8-13079 Filed 6-10-08; 8:45 am]

BILLING CODE 6730-01-P

**FEDERAL MARITIME COMMISSION****Ocean Transportation Intermediary License Reissuances**

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License No.	Name/address	Date reissued
001575F .....	AEC International, Inc., 11931 Seventh Street, Houston, TX 77072 .....	March 28, 2008.
017753NF .....	Associated Consolidators, Express dba A.C.E. Balikbayan, Boxes Direct, 1273 Industrial Parkway, #290, Hayward, CA 94544.	April 3, 2008.
013396N .....	Global Forwarding Ltd., Symal House, 423 Edgware Rd., London, NW9, OHU, United Kingdom ...	March 23, 2008.

**Sandra L. Kusumoto,**

Director, Bureau of Certification and Licensing.

[FR Doc. E8-13087 Filed 6-10-08; 8:45 am]

BILLING CODE 6730-01-P

**FEDERAL MARITIME COMMISSION****Ocean Transportation Intermediary License; Rescission of Order of Revocation**

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

*License Number:* 019764N.

*Name:* Altorky Group Inc. Dba In & Out Cargo.

*Address:* 2323 S. Voss, #203-C1, Houston, TX 77057.

*Order Published:* FR: 05/14/08 (Volume 73, No. 94 Pg. 27827).

**Sandra L. Kusumoto,**

Director, Bureau of Certification and Licensing.

[FR Doc. E8-13084 Filed 6-10-08; 8:45 am]

BILLING CODE 6730-01-P

**FEDERAL MARITIME COMMISSION****Ocean Transportation Intermediary License; Revocations**

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

*License Number:* 018041N.

*Name:* Airsealand Express Incorporated.

*Address:* 151 Haskin Way, Unit E, So. San Francisco, CA 94080.

*Date Revoked:* May 31, 2008.

*Reason:* Failed to maintain a valid bond.

*License Number:* 004092F.

*Name:* Amerford FMS, Inc.

*Address:* 2131 W. Willow Street, Ste. 201, Long Beach, CA 90810.

*Date Revoked:* May 21, 2008.

*Reason:* Failed to maintain a valid bond.

*License Number:* 014460NF.

*Name:* Anthem Worldwide Lines, Inc.

*Address:* 30 Montgomery Street, Ste. 200, Jersey City, NJ 07302.

*Date Revoked:* May 11, 2008.

*Reason:* Failed to maintain valid bonds.

*License Number:* 020384F.

*Name:* AOL Solutions, Inc. dba AOL Freight Solutions.

*Address:* 1836 Center Park Drive, Charlotte, NC 28217.

*Date Revoked:* May 10, 2008.

*Reason:* Failed to maintain a valid bond.

*License Number:* 004659F.

*Name:* Baron Worldwide, Inc.

*Address:* 4400 So. Federal Blvd., Ste. 2-B, Sheridan, CO 80110.

*Date Revoked:* May 28, 2008.

*Reason:* Failed to maintain a valid bond.

*License Number:* 015127NF.

*Name:* Carroll International Transport, Inc.

*Address:* 1308 Centennial Ave., Ste. 147, Piscataway, NJ 08854.

*Date Revoked:* May 11, 2008.

*Reason:* Failed to maintain valid bonds.

*License Number:* 017254N.

*Name:* Central Ocean Freight Inc.

*Address:* 69-49 198th Street, Fresh Meadows, NY 11365.

*Date Revoked:* May 4, 2008.

*Reason:* Failed to maintain a valid bond.

*License Number:* 017468F.

*Name:* Cobal International Inc.

*Address:* 509 Paul Ave., Allendale, NJ 07401.

*Date Revoked:* May 11, 2008.

*Reason:* Failed to maintain a valid bond.

*License Number:* 016781N.

*Name:* Elite Ocean Cargo, Inc.

*Address:* 16303 Air Center Blvd., Houston, TX 77032.

*Date Revoked:* May 2, 2008.

*Reason:* Failed to maintain a valid bond.

*License Number:* 020047N.

*Name:* Fastlane Shipping, Inc.

*Address:* 1990 Westwood Blvd., Ste. 240, Los Angeles, CA 90025.

*Date Revoked:* May 27, 2008.

*Reason:* Surrendered license voluntarily.

*License Number:* 020101N.

*Name:* Guaranteed International Freight and Trade Inc.

*Address:* 239-241 Kingston Ave., Brooklyn, NY 11213.

*Date Revoked:* May 23, 2008.

*Reason:* Failed to maintain a valid bond.

*License Number:* 019693F.

*Name:* IGX International, Inc.

*Address:* Acuarela St., #3A Martinez Nadal Ave., Guaynabo, PR 00966.

*Date Revoked:* May 22, 2008.

*Reason:* Failed to maintain a valid bond.

*License Number:* 004324F.

*Name:* Inter-World Customs Broker, Inc.

*Address:* Marketing Bldg., J.F. Kennedy Ave., KM 2.5, Puerto Nuevo, PR 00920.

*Date Revoked:* May 1, 2008.

*Reason:* Failed to maintain a valid bond.

*License Number:* 001736F.

*Name:* Linda R. Loya dba Loya International Shipping.

*Address:* 14141 Alondra Blvd., Santa Fe Springs, CA 90670.

*Date Revoked:* May 9, 2008.

*Reason:* Failed to maintain a valid bond.

*License Number:* 013934N.

*Name:* Maritime Freight America Corp.

*Address:* 701 Newark Ave., Elizabeth, NJ 07208.

*Date Revoked:* May 19, 2008.

*Reason:* Surrendered license voluntarily.

*License Number:* 019296N.

*Name:* Ours Logis, Inc.

*Address:* 1139 E. Dominguez Street, Unit L, Carson, CA 90746.

*Date Revoked:* May 17, 2008.

*Reason:* Failed to maintain a valid bond.

*License Number:* 002328N.

*Name:* Ross Freight Company, Inc.

*Address:* 26302 So. Western Ave., Ste. 7, Lomita, CA 90717.

*Date Revoked:* May 30, 2008.

*Reason:* Failed to maintain a valid bond.

*License Number:* 003789F.

*Name:* Ryan Freight Services, Inc.

*Address:* 902 Hummingbird Trail, Grapevine, TX 76051.

*Date Revoked:* May 2, 2008.

*Reason:* Failed to maintain a valid bond.

*License Number:* 019455NF.

*Name:* TMMAA Line Houston, Inc.

*Address:* 15550 Vickery Dr., Ste. 100, Houston, TX 77032.

*Date Revoked:* May 3, 2008.

*Reason:* Failed to maintain valid bonds.

*License Number:* 019299F.

*Name:* Trans Atlantic Shipping, Inc. dba TAS, Inc.

*Address:* 1005 W. Arbor Vitae Street, Inglewood, CA 90301.

*Date Revoked:* May 4, 2008.

*Reason:* Failed to maintain a valid bond.

*License Number:* 020240N.

*Name:* Tug New York, Inc. dba Summit Global Logistics.

Address: 150–15 183rd Street,  
Springfield Gardens, NY 11413.

Date Revoked: May 19, 2008.

Reason: Surrendered license  
voluntarily.

License Number: 020738N.

Name: Tug USA, Inc. dba Summit  
Global Logistics.

Address: 17971 Arenth Ave., City of  
Industry, CA 91748.

Date Revoked: May 19, 2008.

Reason: Surrendered license  
voluntarily.

**Sandra L. Kusumoto,**

Director, Bureau of Certification and  
Licensing.

[FR Doc. E8–13077 Filed 6–10–08; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

[Docket No. 08–02]

### Revocation of Ocean Transportation Intermediary, License No. 016019N— Central Agency of Florida, Inc.; Order to Show Cause

Respondent Central Agency of  
Florida, Inc. (“Central”) was  
incorporated in Florida in 1997 and,  
since 1999, has operated as an ocean  
transportation intermediary (“OTI”) pursuant to FMC License No. 016019N. According to records maintained by the Commission’s Bureau of Certification and Licensing (“BCL”), Central’s office is located at 7088 NW 50th Street, Miami, FL 33145.

BCL records identify Patricio  
Quevedo as Central’s President and sole  
shareholder. Mr. Quevedo is also  
identified as Central’s Qualifying  
Individual (“QI”). On January 24, 2007,  
Mr. Quevedo filed an Officer/Director  
Resignation Form with the State of  
Florida resigning as an officer of  
Central.

Commission regulations require an  
OTI continuously to employ an  
individual with “a minimum of three  
years of experience in ocean  
transportation intermediary activities in  
the United States, and the necessary  
character to render ocean transportation  
intermediary services.” 46 CFR  
515.11(a).<sup>1</sup> For a corporation, the QI  
must be an active corporate officer. 46  
CFR 515.11(b). Further, when the QI of  
a corporation resigns as an officer of that  
corporation, section 515.18 of the  
Commission’s regulations requires the  
corporation to notify the Commission of  
the resignation and to designate a

replacement QI within thirty days. 46  
CFR 515.18.

Central was licensed on the basis of  
the qualifications of Mr. Quevedo as QI.  
Mr. Quevedo, however, resigned as an  
officer of the corporation. Accordingly,  
without a QI, Central does not meet the  
requirements imposed by the  
Commission’s regulations to continue as  
a licensed OTI. Central has been  
notified in writing of its noncompliance  
with the Commission’s regulations, and  
has been advised explicitly of the  
consequences of failure to designate a  
replacement QI, including possible  
revocation of its license.

Section 19(c) of the Shipping Act of  
1984, as amended, 46 U.S.C. 40903(a)  
authorizes the Commission, after notice  
and the opportunity for a hearing, to:

\* \* \* suspend or revoke an ocean  
transportation intermediary’s license if the  
Commission finds that the ocean  
transportation intermediary—

(2) Willfully failed to comply with a  
provision of this part or with an order or  
regulation of the Commission.

Now therefore, it is ordered that,  
pursuant to sections 11 and 19(c) of the  
Shipping Act of 1984, 46 U.S.C. 41302,  
40903(a)(2), Central Agency of Florida,  
Inc., is directed to show cause, within  
30 days of publication of this Order in  
the **Federal Register**, why the  
Commission should not revoke its  
license for failure to designate and  
maintain a QI, as required by sections  
515.11 and 515.18 of the Commission’s  
regulations, 46 CFR 515.11 and 515.18;

It is further ordered that, pursuant to  
sections 11 and 19(c) of the Shipping  
Act of 1984, 46 U.S.C. 41302,  
40903(a)(2), Central Agency is directed  
to show cause, within 30 days of  
publication of this Order in the **Federal  
Register**, why the Commission should  
not order it to cease and desist from  
operating as an ocean transportation  
intermediary in the foreign trade of the  
United States for failure to designate  
and maintain a QI, as required by  
sections 515.11 and 515.18 of the  
Commission’s regulations, 46 CFR  
515.11 and 515.18.

It is further ordered that this  
proceeding is limited to the submission  
of affidavits of facts and memoranda of  
law;

It is further ordered that any person  
having an interest and desiring to  
intervene in this proceeding shall file a  
petition for leave to intervene in  
accordance with Rule 72 of the  
Commission’s Rules of Practice and  
Procedure, 46 CFR 502.72. Such petition  
shall be accompanied by the petitioner’s  
memorandum of law and affidavits of  
fact, if any, and shall be filed no later  
than the day fixed below;

It is further ordered that Central  
Agency is named as a Respondent in  
this proceeding. Affidavits of fact and  
memoranda of law shall be filed by  
Respondent and any intervenors in  
support of Respondent no later than July  
11, 2008;

It is further ordered that the  
Commission’s Bureau of Enforcement be  
made a party to this proceeding;

It is further ordered that reply  
affidavits and memoranda of law shall  
be filed by the Bureau of Enforcement  
and any intervenors in opposition to  
Respondent no later than August 11,  
2008;

It is further ordered that rebuttal  
affidavits and memoranda of law shall  
be filed by Respondent and intervenors  
in support no later than August 26,  
2008;

It is further ordered that:

(a) Should any party believe that an  
evidentiary hearing is required, that  
party must submit a request for such  
hearing together with a statement setting  
forth in detail the facts to be proved, the  
relevance of those facts to the issues in  
this proceeding, a description of the  
evidence which would be adduced, and  
why such evidence cannot be submitted  
by affidavit;

(b) Should any party believe that an  
oral argument is required, that party  
must submit a request specifying the  
reasons therefore and why argument by  
memorandum is inadequate to present  
the party’s case; and

(c) Any request for evidentiary  
hearing or oral argument shall be filed  
no later than August 11, 2008;

It is further ordered that notice of this  
Order to Show Cause be published in  
the **Federal Register**, and that a copy  
thereof be served upon respondent at its  
last known address;

It is further ordered that all  
documents submitted by any party of  
record in this proceeding shall be filed  
in accordance with Rule 118 of the  
Commission’s Rules of Practice and  
Procedure, 46 CFR 502.118, as well as  
being mailed directly to all parties of  
record;

Finally, it is ordered that pursuant to  
the terms of Rule 61 of the  
Commission’s Rules of Practice and  
Procedure, 46 CFR 502.61, the final  
decision of the Commission in this  
proceeding shall be issued by December  
24, 2008.

By the Commission.

**Karen V. Gregory,**  
Assistant Secretary.

[FR Doc. E8–13080 Filed 6–10–08; 8:45 am]

BILLING CODE 6730–01–P

<sup>1</sup> The Commission’s regulations pertaining to  
licensing and the responsibilities of OTIs are set  
forth at 46 CFR Part 515.

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 26, 2008.

**A. Federal Reserve Bank of Kansas City** (Todd Offenbacher, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001:

1. *Peter Joseph Fiene and Jane Frances Fiene*, both of Overland Park, Kansas, and the Patrick Robert Fiene Family Irrevocable Trust No. 1, Peter Joseph Fiene, trustee, to acquire voting shares of BOR Bancorp, and thereby indirectly acquire voting shares of Bank of Rothville, both in Rothville, Missouri.

Board of Governors of the Federal Reserve System, June 6, 2006.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E8-13032 Filed 6-10-08; 8:45 am]

**BILLING CODE 6210-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

*Board Meeting Times and Dates (All times are Central Daylight Time):*

9 a.m.–5 p.m., June 24, 2008.

9 a.m.–5 p.m., June 25, 2008.

9 a.m.–2 p.m., June 26, 2008.

*Public Comment Times and Dates (All times are Central Daylight Time):*

5 p.m.–6 p.m., June 24, 2008.

7:30 p.m.–8:30 p.m., June 25, 2008.

*Place:* Millennium Hotel St. Louis, 200 South 4th Street, St. Louis, MO 63102, Telephone (314) 241-9500, Fax (314) 516-6149.

*Status:* Open to the public, limited only by the space available. The meeting space accommodates approximately 75 to 100 people.

*Background:* The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program (EEOICP) Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2009.

*Purpose:* This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

*Matters to be Discussed:* The agenda for the Advisory Board meeting includes: NIOSH Program Status Update; Special Exposure Cohort (SEC) Petitions for: Y-12 Plant, Dow Chemical Company, and Spencer Chemical Company; SEC Petition Updates: Chapman Valve, Rocky Flats Plant, Blockson Chemical Company, Area IV of the Santa Susana Field Laboratory, Massachusetts Institute of Technology (MIT), Texas City Chemicals; Presentation by the Office of Compensation Analysis and Support (OCAS) on special science journal publication; a presentation on Board interactions with Congressional staffers; Department of Labor (DOL) Update; Department of Energy (DOE) Update including data access and security; Work Group reports; Subcommittee on Dose

Reconstruction Reviews Report; and Board Future Plans and Schedules.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted according to the policy provided below. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Policy on Redaction of Board Meeting Transcripts (Public Comment). (1) If a person making a comment gives his or her name, no attempt will be made to redact that name. (2) NIOSH will take reasonable steps to ensure that individuals making public comment are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include: (a) A statement read at the start of each public comment period stating that transcripts will be posted and names of speakers will not be redacted; (b) A printed copy of the statement mentioned in (a) above will be displayed on the table where individuals sign up to make public comment; (c) A statement such as outlined in (a) above will also appear with the agenda for a Board Meeting when it is posted on the NIOSH Web site; (d) A statement such as in (a) above will appear in the **Federal Register** Notice that announces Board and Subcommittee meetings. (3) If an individual in making a statement reveals personal information (e.g., medical information) about themselves that information will not usually be redacted. The NIOSH FOIA coordinator will, however, review such revelations in accordance with the Freedom of Information Act and the Federal Advisory Committee Act and if deemed appropriate, will redact such information. (4) All disclosures of information concerning third parties will be redacted. (5) If it comes to the attention of the DFO that an individual wishes to share information with the Board but objects to doing so in a public forum, the DFO will work with that individual, in accordance with the Federal Advisory Committee Act, to find a way that the Board can hear such comments.

*Contact Person for More Information:* Christine Branche, PhD, Executive Secretary, NIOSH, CDC, 395 E. Street, SW., Suite 9200, Washington, DC 20201, Telephone (513) 533-6800, Toll Free 1 (800) 35-NIOSH, E-mail [ocas@cdc.gov](mailto:ocas@cdc.gov).

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 4, 2008.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E8-13043 Filed 6-10-08; 8:45 am]

**BILLING CODE 4163-18-P**



**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Disease Control and Prevention****Task Force on Community Preventive Services**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

*Name:* Task Force on Community Preventive Services.

*Times and Dates:* 8 a.m.–6 p.m. EST, June 25, 2008. 8 a.m.–1 p.m. EST, June 26, 2008.

*Place:* Centers for Disease Control and Prevention, 2500 Century Parkway, Atlanta, Georgia 30345.

*Status:* Open to the public, limited only by the space available.

*Purpose:* The mission of the Task Force is to develop and publish the *Guide to Community Preventive Services (Community Guide)*, which consists of systematic reviews of the best available scientific evidence and associated recommendations regarding what works in the delivery of essential public health services.

Topics include:

- Interventions to reduce vaccine-preventable diseases: Updates to existing reviews
- Asthma—home visitation interventions
- Alcohol—hours and days of sale
- Worksites—On-site access to influenza vaccination
- Folic Acid—Community-wide education resupplements

Agenda items are subject to change as priorities dictate.

Persons interested in reserving a space for this meeting should call Charlene Crawford at 404-498-2498 by close of business on June 20, 2008.

Contact person for additional information: Charlene Crawford, Coordinating Center for Health Information and Services, National Center for Health Marketing, Office of the Director, 1600 Clifton Road, M/S E-69, Atlanta, GA 30333, phone: 404-498-2498.

Dated: June 4, 2008.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

[FR Doc. E8-13114 Filed 6-10-08; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Administration for Children and Families****President's Committee for People With Intellectual Disabilities Notice of Meeting**

**AGENCY:** President's Committee for People with Intellectual Disabilities (PCPID).

**ACTION:** Notice of Quarterly Meeting.

**DATES:** June 25, 2008, from 9 a.m. to 5 p.m. EST; June 26, 2008, from 2:30 p.m. to 5 p.m.; and June 27, 2008, from 8:30 a.m. to 12 p.m. EST. The meeting will be open to the public.

**ADDRESSES:** The meeting will be held in Room 800 of the Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201. Individuals who would like to participate via conference call may do so by dialing 888-810-4935, passcode: PCPID. Individuals who will need accommodations for a disability in order to attend the meeting (e.g., sign language interpreting services, assistive listening devices, materials in alternative format such as large print or Braille) should notify MJ Karimi via e-mail at

*Madjid.KarimiAsl@ACF.hhs.gov*, or via telephone at 202-619-0634, no later than June 18, 2008. PCPID will attempt to meet requests made after that date, but cannot guarantee availability. All meeting sites are barrier free.

*Agenda:* PCPID will meet to swear in the new members of the Committee and set the agenda for the coming year.

*Additional Information:* For further information, please contact Sally D. Atwater, Executive Director, President's Committee for People with Intellectual Disabilities, The Aerospace Center, Second Floor West, 370 L'Enfant Promenade, SW., Washington, DC 20447. Telephone: 202-619-0634. Fax: 202-205-9591. E-mail: *satwater@acf.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services on a broad range of topics relating to programs, services and supports for persons with intellectual disabilities. PCPID, by Executive Order, is responsible for evaluating the adequacy of current practices in programs, services and supports for persons with intellectual disabilities, and for reviewing legislative proposals that impact the quality of life experienced by citizens with intellectual disabilities and their families.

Dated: June 5, 2008.

**Sally D. Atwater,**

*Executive Director, President's Committee for People with Intellectual Disabilities.*

[FR Doc. E8-13091 Filed 6-10-08; 8:45 am]

**BILLING CODE 4184-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration**

**[Docket No. FDA-2006-E-0130] (formerly Docket No. 2006E-0486)**

**Determination of Regulatory Review Period for Purposes of Patent Extension; ROTATEQ**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for ROTATEQ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

**ADDRESSES:** Submit written or electronic comments and petitions to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993-0002, 301-796-3602.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human



biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA approved for marketing the human biologic product ROTATEQ (Rotavirus Vaccine, Live, Oral, Pentavalent). ROTATEQ is indicated for the prevention of rotavirus gastroenteritis in infants and children caused by the serotypes G1, G2, G3, and G4, when administered as a 3-dose series to infants between the ages of 6 to 32 weeks. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ROTATEQ (U.S. Patent No. 5,626,851) from the Wistar Institute of Anatomy and Biology and the Children's Hospital of Philadelphia, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 28, 2007, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of ROTATEQ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ROTATEQ is 4,577 days. Of this time, 4,272 days occurred during the testing phase of the regulatory review period, while 305 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* July 26, 1993. The applicants claim June 18, 1993, as the date the investigational new drug application (IND) became effective.

However, FDA records indicate that the IND effective date was July 26, 1993, when the IND was removed from clinical hold and studies in humans could proceed.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* April 5, 2005. FDA has verified the applicants' claim that the biologics license application (BLA) for ROTATEQ (BLA 125122) was initially submitted on April 5, 2005.

3. *The date the application was approved:* February 3, 2006. FDA has verified the applicants' claim that BLA 125122 was approved on February 3, 2006.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, these applicants seek 1,751 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by August 11, 2008. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 8, 2008. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at <http://www.regulations.gov>.

Dated: May 21, 2008.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. E8–13109 Filed 6–10–08; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2008–N–0324]

### Summaries of Medical and Clinical Pharmacology Reviews of Pediatric Studies; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of summaries of medical and clinical pharmacology reviews of pediatric studies submitted in supplements for ABILIFY (aripiprazole), ANDROGEL (testosterone), and DIOVAN (valsartan). These summaries are being made available consistent with the Best Pharmaceuticals for Children Act, enacted in 2002, (the 2002 BPCA). For all pediatric supplements submitted under the 2002 BPCA, the 2002 BPCA required FDA to make available to the public, including by publication in the **Federal Register**, a summary of the medical and clinical pharmacology reviews of the pediatric studies conducted for the supplement.

**ADDRESSES:** Submit written requests for single copies of the summaries to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Please specify by product name which summary or summaries you are requesting. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries.

#### FOR FURTHER INFORMATION CONTACT:

Grace Carmouze, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6460, Silver Spring, MD 20993–0002, 301–796–0700, e-mail: [grace.carmouze@fda.hhs.gov](mailto:grace.carmouze@fda.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Background

FDA is announcing the availability of summaries of medical and clinical

pharmacology reviews of pediatric studies conducted for ABILIFY (aripiprazole), ANDROGEL (testosterone), and DIOVAN (valsartan). The summaries are being made available consistent with section 9 of the 2002 BPCA (Public Law 107–109). Enacted on January 4, 2002, the 2002 BPCA reauthorized, with certain important changes, the pediatric exclusivity program described in section 505A of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355a). Section 505A of the act permits certain applications to obtain 6 months of marketing exclusivity if, in accordance with the requirements of the statute, the sponsor submits requested information relating to the use of the drug in the pediatric population.

One of the provisions the 2002 BPCA added to the pediatric exclusivity program pertains to the dissemination of pediatric information. Specifically, for all pediatric supplements submitted under the 2002 BPCA, the 2002 BPCA required FDA to make available to the public, including by publication in the **Federal Register**, a summary of the medical and clinical pharmacology reviews of pediatric studies conducted for the supplement within 180 days of study submission to FDA (21 U.S.C. 355a(j)(1)).

The pediatric exclusivity program described in section 505A of the act again was reauthorized on September 27, 2007, in title V of the Food and Drug Administration Amendments Act (FDAAA) (Public Law 110–85). FDAAA revised the public dissemination provision previously found in 21 U.S.C. 355a(j)(1). As revised, not later than 210 days after the date of submission of a report on a pediatric study conducted under the pediatric exclusivity program, FDA must make available to the public the medical, statistical, and clinical pharmacology reviews of the pediatric studies (21 U.S.C. 355a(k)(1)). Under FDAAA, publication in the **Federal Register** is no longer required. FDA currently posts these reviews on the Internet at [http://www.fda.gov/cder/pediatric/BpcaPrea\\_full\\_review.htm](http://www.fda.gov/cder/pediatric/BpcaPrea_full_review.htm).

The three sets of summaries being announced in this issue of the **Federal Register** are the last summaries of reviews of supplements subject to the 2002 BPCA dissemination provision. Because publication in the **Federal Register** is no longer required, this will be the last notice announcing the availability of summaries of medical and clinical pharmacology reviews of pediatric studies conducted under the pediatric exclusivity program. FDA has posted on the Internet at <http://www.fda.gov/cder/pediatric/index.htm>

summaries of medical and clinical pharmacology reviews of pediatric studies submitted in supplements for ABILIFY (aripiprazole), ANDROGEL (testosterone), and DIOVAN (valsartan). Copies are also available by mail (see **ADDRESSES**).

## II. Electronic Access

Persons with access to the Internet may obtain the document at <http://www.fda.gov/cder/pediatric/index.htm>.

Dated: June 3, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E8–13099 Filed 6–10–08; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### HIV/AIDS Bureau; Ryan White HIV/AIDS Program Core Medical Services Waiver Application Requirements

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Final notice.

**SUMMARY:** The Health Resources and Services Administration (HRSA) is amending the uniform waiver standards for Ryan White HIV/AIDS Program grantees requesting a core medical services waiver for fiscal year (FY) 2009 and beyond. Title XXVI of the Public Health Service (PHS) Act, as amended by the Ryan White HIV/AIDS Treatment Modernization Act of 2006 (Ryan White HIV/AIDS Program), requires that grantees expend 75 percent of Parts A, B, and C funds on core medical services, including antiretroviral drugs, for individuals with HIV/AIDS identified and eligible under the legislation. HRSA has issued waiver standards for grantees under Parts A, B, and C of Title XXVI of the PHS Act. This **Federal Register** notice seeks to make public the final notice of Uniform Standard for Waiver of Core Medical Services Requirements for Grantees Under Parts A, B, and C effective FY 2009.

**SUPPLEMENTARY INFORMATION:** The Ryan White HIV/AIDS Program imposes two criteria for waiver eligibility: (1) no waiting lists for AIDS Drug Assistance Program (ADAP) services; and (2) core medical services availability within the relevant service area to all individuals with HIV/AIDS identified and eligible under Title XXVI of the PHS Act. (See sections 2604(c)(2), 2612(b)(2), and 2651(c)(2) of the PHS Act.) HRSA's HIV/

AIDS Bureau issued interim waiver eligibility guidance for FY 2007 to provide immediate implementation of these waiver provisions. The final Uniform Standard for Waiver of Core Medical Services Requirements for Grantees Under Parts A, B, and C reflects modifications based on public comment received in response to the guidance published in the **Federal Register** on November 27, 2007. During the 30-day comment period ending December 26, 2007, HAB received comments from the public.

Beginning in FY 2009, HRSA will utilize new standards for granting waivers of the core medical services requirement for Ryan White HIV/AIDS Program grantees. These standards meet the intent of the Ryan White HIV/AIDS Treatment Modernization Act of 2006 to increase access to core medical services, including antiretroviral drugs, for persons with HIV/AIDS and to ensure that grantees receiving waivers demonstrate the availability of such services for individuals with HIV/AIDS identified and eligible under Title XXVI of the PHS Act. The purposes of this notice are: (1) To establish a uniform standard for core medical services waiver eligibility for grantees under Parts A, B, and C of Title XXVI of the PHS Act; and (2) to establish a process for waiver request submission, review and notification. The core medical services waiver uniform standard and waiver request process in this notice apply to Ryan White HIV/AIDS Program grant awards under Parts A, B, and C of Title XXVI of the PHS Act effective for the FY 2009 grant year.

#### Comments on the Proposed Uniform Standard for Waiver of Core Medical Services Requirements for Grantees Under Parts A, B, and C

There were several public comments in strong support of the draft policy stating that the proposed changes allow more funds to be allocated to life-saving core medical services, including medications. The following suggestions and concerns were the main issues raised in the public comments.

**Issue (1): Types of Documentation and Evidence Required as Part of the Waiver Request.**

(Comment) Submission of documentation letters from private payers should be optional, not required.

(Response) HRSA concurs with the suggestion and changed the sentence regarding private insurers to "letters from Medicaid and other State and local HIV/AIDS entitlement and benefits programs, which may include private insurers".

(Comment) Requiring submission of data demonstrating that services are “being utilized” is unreasonable and falls outside the provisions of the statute.

(Response) HRSA concurs with the comment. As amended, the standard requires grantees to provide specific verifiable evidence that all listed core medical services are available and *accessible* to meet the needs of persons with HIV/AIDS who are identified and eligible for Ryan White HIV/AIDS Program services without further infusion of Ryan White HIV/AIDS Program dollars.

(Comment) “Verifiable evidence” that core services are available and accessible is not replicable across jurisdictions and would not result in “uniform waiver standards”.

(Response) HRSA does not concur with the comment. The core medical services waiver standards do not require that methods of providing “verifiable evidence” of service availability and accessibility be replicable across jurisdictions. When submitting a waiver request, each jurisdiction must submit clear and concise verifiable documentation as to the availability and accessibility of all core medical services in their service area. Each waiver request will be reviewed and assessed individually on its merits.

(Comment) There is no basis for the proposed standard that all core medical services must be available within 30 days.

(Response) The Ryan White HIV/AIDS Program legislation specifies that core medical services must be “available.” Access to routine medical and preventive care services within 30 days has been cited as an example of a reasonable availability standard for Medicare Coordinated Care Plans by the Department of Health and Human Services/Centers for Medicare and Medicaid Services (HHS/CMS). (See Medicare Managed Care Manual, Chapter 4 Benefits and Beneficiary Protections, section 120.2 Access and Availability Rules for Coordinated Care Plans at <http://www.cms.hhs.gov/manuals/downloads/mc86c04.pdf>.) Therefore, HRSA will maintain the requirement that all core medical services are available to individuals identified in the service area within 30 days, as this requirement serves as a benchmark for the availability of core medical services.

Issue (2): Core Medical Services Waiver Requests Submitted as Part of the Annual Grant Application

(Comment) Core medical services waiver requests should be allowed to be

submitted after awards are received, to better respond to fluctuations in funding.

(Response) HRSA does not agree with the recommendation to submit waiver requests after receipt of a Notice of Grant Awards (NGA). By law, the waiver will be granted at the time the award is made (See sections 2604(c)(2)(B), 2612(b)(2)(B), and 2651(c)(2)(B) of the PHS Act.)

Issue (3): Requests for Obtaining a Core Medical Services Waiver Need to be Strengthened to Require More Stringent Documentation Than That Proposed

(Comment) Requests for obtaining a core medical service waiver should include assurances that core services are available and accessible to those most in need. Documentation should include information about average waiting times for first appointments, average travel time to service locations as well as cost-sharing or service limits related to core services. Grantees should be required to identify all eligible people including those not yet diagnosed.

(Response) HRSA acknowledges the commenter’s emphasis on the importance of access to services and follow-up, however, disagrees with the suggestion for additional documentation as this would be overly burdensome to grantees seeking core medical service waivers. Furthermore, the documentation imposed by this final notice is sufficiently detailed for HRSA to approve or deny core medical services waiver requests.

(Comment) Require that Ryan White HIV/AIDS Program-funded core medical services providers be included in the public process.

(Response) HRSA concurs. Grantees will be required to provide evidence of a public process for the dissemination of information and must document that they have sought input from affected communities, including Ryan White HIV/AIDS Program-funded core medical services providers.

(Comment) Public input should be independent of routine community planning.

(Response) HRSA does not concur. Requiring a public input process independent of routine community planning would be burdensome given Ryan White HIV/AIDS Program administrative cost caps.

(Comment) Require documentation demonstrating that grantees applying for waivers have made reasonable efforts to identify all eligible persons including those not yet diagnosed and link them to care. This should include using at least 25 percent of Ryan White HIV/

AIDS Program funding on outreach and testing.

(Response) HRSA agrees with the commenter’s emphasis on the importance of ensuring that all cases of HIV and AIDS are identified and brought into care, but disagrees with the proposal. HRSA urges all of the Ryan White HIV/AIDS Program grantees to utilize available outreach funding, including those available from the Centers for Disease Control and Prevention, to identify HIV-positive individuals and provide linkages to HIV care and treatment.

#### **Uniform Standard for Waiver of Core Medical Services Requirements for Grantees Under Parts A, B, and C**

Grantees must submit a waiver request with the annual grant application containing the following certifications and documentation which will be utilized by HRSA in determining whether to grant a waiver. The waiver must be signed by the chief elected official or the fiscally responsible agent, and include:

1. Certification from the Part B State grantee that there are no current or anticipated ADAP services waiting lists in the State for the year in which such waiver request is made. This certification must also specify that there are no waiting lists for a particular core class of antiretroviral therapeutics established by the Secretary, e.g., fusion inhibitors;

2. Certification that all core medical services listed in the statute (Part A section 2604(c)(3), Part B section 2612(b)(3), and Part C section 2651(c)(3)), regardless of whether such services are funded by the Ryan White HIV/AIDS Program, are available within 30 days for all identified and eligible individuals with HIV/AIDS in the service area;

3. Evidence that a public process was conducted to seek public input on availability of core medical services;

4. Evidence that receipt of the core medical services waiver is consistent with the grantee’s Ryan White HIV/AIDS Program application (e.g., “Description of Priority Setting and Resource Allocation Processes” and “Unmet Need Estimate and Assessment” sections of the application for Parts A, “Needs Assessment and Unmet Need” section of the application under Part B, and “Description of the Local HIV Service Delivery System,” and “Current and Projected Sources of Funding” sections of the application under Part C).

**Types of Documentation and Evidence**

Grantees must provide evidence that all of the core medical services listed in the statute, regardless of whether such services are funded by the Ryan White HIV/AIDS Program, are available to all individuals with HIV/AIDS identified and eligible under Title XXVI of the PHS Act in the service area within 30 days. Such documentation may include one or more of the following types of information for the service area for the prior fiscal year: HIV/AIDS care and treatment services inventories including funding sources, HIV/AIDS met and unmet need assessments, HIV/AIDS client/patient service utilization data, planning council core medical services priority setting and funding allocations documents, and letters from Medicaid and other State and local HIV/AIDS entitlement and benefits programs, which may include private insurers. Information provided by grantees must show specific verifiable evidence that all listed core medical services are available and accessible to meet the needs of persons with HIV/AIDS who are identified and eligible for Ryan White HIV/AIDS Program services without further infusion of Ryan White HIV/AIDS Program dollars. Such documentation must also describe which specific core medical services are available, from whom, and through what funding source.

Grantees must have evidence of a public process for the dissemination of information and must document that they have sought input from affected communities, including Ryan White HIV/AIDS Program-funded core medical services providers, related to the availability of core medical services and the decision to request a waiver. This public process may be the same one utilized for obtaining input on community needs as part of the comprehensive planning process. In addition, grantees must describe in narrative form the following:

1. Local/State underlying issues that influenced the grantee's decision to request a waiver and how the submitted documentation supports the assertion that such services are available and accessible to all individuals with HIV/AIDS identified and eligible under Title XXVI in the service area.
2. How the approval of a waiver will impact the grantee's ability to address unmet need for HIV/AIDS services and perform outreach to HIV-positive individuals not currently in care.
3. The consistency of the waiver request with the grantee's grant application, including proposed service priorities and funding allocations.

**Waiver Review and Notification Process**

As indicated, grantees must submit a waiver request with their annual grant application. No waiver requests will be accepted at any other time (other than with the annual grant application). Application guidance documents will be amended to include this requirement. HRSA/HAB will review requests for waiver of the core medical services requirement and will notify grantees of waiver approval no later than the date of issuance of a NOGA. Core medical services waivers will be effective for a one-year period consistent with the grant award period.

**The Paperwork Reduction Act of 1995**

The burden for this activity has been reviewed and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (OMB Number 0915-0307).

Dated: June 5, 2008.

**Elizabeth M. Duke,**  
*Administrator.*

[FR Doc. E8-13102 Filed 6-10-08; 8:45 am]

**BILLING CODE 4165-15-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Health Resources and Services Administration****Statement of Organization, Functions and Delegations of Authority**

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; 67 FR 46519, July 15, 2002; 68 FR 787-793, January 7, 2003; 68 FR 8515-8517, February 21, 2003; 68 FR 64357-64358, November 13, 2003; 69 FR 56433-56445, September 21, 2004; 70 FR 19962-19963, April 15, 2005; as last amended at FR 72 57588-57589, October 10, 2007). This Order of Succession supersedes the Order of Succession for the Administrator, HRSA, published at FR 72 57588-57589, October 10, 2007.

This notice deletes the Associate Administrator, Office of Management, from HRSA's hierarchy affecting the Order of Succession. It also adds, as a last echelon to the HRSA Administrator's order of succession, HRSA Regional Division Directors in the order in which they have received their permanent appointment as such. This

notice is to reflect the new Order of Succession for HRSA.

**Section R-30, Order of Succession**

During the absence or disability of the Administrator, or in the event of a vacancy in the office, the officials designated below shall act as Administrator in the order in which they are listed:

1. Deputy Administrator;
2. Senior Advisor to the Administrator;
3. Chief Financial Officer;
4. Associate Administrator, Bureau of Primary Health Care;
5. Associate Administrator, Bureau of Health Professions;
6. Associate Administrator, HIV/AIDS Bureau;
7. Associate Administrator, Maternal and Child Health Bureau;
8. Associate Administrator, Bureau of Clinician Recruitment and Service;
9. Associate Administrator, Healthcare Systems Bureau;
10. Associate Administrator, Office of Performance Review, and
11. HRSA Regional Division Directors in the order in which they have received their permanent appointment as such.

**Exceptions**

(a) No official listed in this section who is serving in acting or temporary capacity shall, by virtue of so serving, act as Administrator pursuant to this section.

(b) Notwithstanding the provisions of this section, during a planned period of absence, the Administrator retains the discretion to specify a different order of succession.

**Section R-40, Delegation of Authority**

All delegations and redelegations of authorities to officers and employees of the Health Resources and Services Administration which were in effect immediately prior to the effective date of this action will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this action.

This document is effective upon date of signature.

Dated: June 5, 2008.

**Elizabeth M. Duke,**  
*Administrator.*

[FR Doc. E8-13098 Filed 6-10-08; 8:45 am]

**BILLING CODE 4165-15-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 12, 2008, 8 a.m. to June 13, 2008, 5 p.m., Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC, 20009 which was published in the **Federal Register** on May 21, 2008, 73 FR 29524–29525.

The meeting will be held one day only June 13, 2008. The meeting time and location remain the same. The meeting is closed to the public.

Dated: June 3, 2008.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–12907 Filed 6–10–08; 8:45 am]

**BILLING CODE 4140–01–M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Cardiovascular Differentiation and Development Study Section, June 12, 2008, 8 a.m. to June 13, 2008, 1 p.m., Holiday Inn Fisherman's Wharf, 1300 Columbus Avenue, San Francisco, CA, 94133 which was published in the **Federal Register** on April 22, 2008, 73 FR 21636–21639.

The meeting will be held at the Holiday Inn Express Hotel and Suites, Fisherman's Wharf, 550 North Point Street, San Francisco, CA 94133. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: June 3, 2008.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–12908 Filed 6–10–08; 8:45 am]

**BILLING CODE 4140–01–M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****National Institute of General Medical Sciences; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Minority Programs Review Committee; Minority Programs Review Subcommittee B.

*Date:* June 30–July 1, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Rebecca H. Johnson, PhD., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, Bethesda, MD 20892, 301–594–2771, [johnsonrh@nigms.nih.gov](mailto:johnsonrh@nigms.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 3, 2008.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–12910 Filed 6–10–08; 8:45 am]

**BILLING CODE 4140–01–M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****National Heart, Lung, and Blood Institute; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute, Special Emphasis Panel, Resource Related Research Project (R24).

*Date:* June 25, 2008.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

*Contact Person:* Yingying Li-Smerin, MD, PhD., Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0277, [lismerein@nhlbi.nih.gov](mailto:lismerein@nhlbi.nih.gov).

*Name of Committee:* National Heart, Lung, and Blood Institute, Special Emphasis Panel, VAD Technologies Phase II Study.

*Date:* June 26, 2008.

*Time:* 1 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

*Contact Person:* Youngsuk Oh, PhD., Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, 301–435–0277, [yoh@mail.nih.gov](mailto:yoh@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 3, 2008.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–12913 Filed 6–10–08; 8:45 am]

**BILLING CODE 4140–01–M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****National Institute on Aging; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Recovery From Illness.

*Date:* July 15, 2008.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway, 7201 Wisconsin Avenue Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Alicja L. Markowska, PhD, DSC, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301-496-9666, [markowsania.nih.gov](mailto:markowsania.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 3, 2008

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-12911 Filed 6-10-08; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism, Special Emphasis Panel, Member Conflict for ZAA1-CC-12.

*Date:* June 27, 2008.

*Time:* 3 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Legacy Hotel, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Beata Buzas, PhD., Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 3041, Rockville, MD 20852, 301-443-0800, [bbuzas@mail.nih.gov](mailto:bbuzas@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 3, 2008.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-12914 Filed 6-10-08; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HOMELAND SECURITY

### National Protection and Programs Directorate; Submission for Review: US-CERT Incident Reporting 1670-NEW

**AGENCY:** National Protection and Programs Directorate, National Cyber Security Division, DHS.

**ACTION:** 60-Day Notice and request for comments.

**SUMMARY:** The Department of Homeland Security (DHS) invites the general public and other federal agencies the opportunity to comment on new information collection request 1670-NEW, US-CERT Incident Reporting. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35), as amended by the Clinger-Cohen Act (Pub. L. 104-106), DHS is soliciting comments for this collection.

**DATES:** Comments are encouraged and will be accepted until August 11, 2008. This process is conducted in accordance with 5 CFR 1320.1.

**ADDRESSES:** Interested persons are invited to submit written comments on

the proposed information collection to Chief of Information Services, US-CERT Security Operations Center, Mail Stop 8500, 245 Murray Lane, SW., Building 410, Washington, DC 20528, Fax 703-235-5042, or e-mail [info@us-cert.gov](mailto:info@us-cert.gov).

**FOR FURTHER INFORMATION CONTACT:** Chief of Information Services, US-CERT Security Operations Center, Mail Stop 8500, 245 Murray Lane, SW., Building 410, Washington, DC 20528, Fax 703-235-5042, or e-mail [info@us-cert.gov](mailto:info@us-cert.gov).

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

### Analysis

*Agency:* Department of Homeland Security, National Protection and Programs Directorate, National Cyber Security Division.

*Title:* US-CERT Incident Reporting. *OMB Number:* 1670-NEW.

*Frequency:* Once.

*Affected Public:* Federal, State, Local, Tribal, Private Sector.

*Number of Respondents:* 6000 per year.

*Estimated Time per Respondent:* 20 minutes.

*Total Burden Hours:* 2000 hours.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintaining):* None.

*Description:* The Federal Information Security Management Act of 2002 requires all federal agencies to report security incidents to a federal incident response center, designated as the United States Computer Emergency Readiness Team (US-CERT). US-CERT has created a web-based Incident Reporting Form for all federal agencies,

organizations, private and commercial companies, and individuals to submit incidents to US-CERT's security operations center. In July of 2006, OMB issued Memo M06-19 revising reporting procedures to require all federal agencies to report all incidents involving personally identifiable information (PII) to US-CERT within one hour of discovering the incident.

Dated: June 3, 2008.

**Matt Coose,**

*Acting Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.*

[FR Doc. E8-13101 Filed 6-10-08; 8:45 am]

**BILLING CODE 4410-10-P**

## DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2008-0055]

### Homeland Security Advisory Council

**AGENCY:** Policy Directorate, DHS.

**ACTION:** Committee Management; Notice of Partially Closed Federal Advisory Committee Meeting.

**SUMMARY:** The Homeland Security Advisory Council (HSAC) will meet for purposes of reviewing recommendations from the Essential Technology Task Force (ETTF) on June 25, 2008, in Washington, DC. In addition, the HSAC will receive briefings from Secretary Michael Chertoff and other DHS officials. The meeting will be partially closed to the public.

**DATES:** The HSAC will meet June 25, 2008, from 10 a.m. to 3:30 p.m. The meeting will be closed from 10 a.m. to 11 a.m. and from 12 p.m. to 3:30 p.m.

**ADDRESSES:** The open portion of the meeting will be held in Salon II at the Ritz-Carlton Hotel located at 1150 22nd Street, NW. in Washington, DC. Requests to have written material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by June 18, 2008. Comments must be identified by DHS-2008-0055 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [HSAC@dhs.gov](mailto:HSAC@dhs.gov). Include the docket number in the subject line of the message.

- *Fax:* 202-282-9207.

- *Mail:* Homeland Security Advisory Council, c/o Jennifer Myers, 245 Murray Drive, SW., Building 410, Mailstop 0850, Washington, DC 20528.

*Instructions:* All submissions received must include the words "Department of

Homeland Security" and the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received by the HSAC, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Jennifer Myers, Homeland Security Advisory Council, (202) 447-3135, [HSAC@dhs.gov](mailto:HSAC@dhs.gov).

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92-463). The HSAC provides independent advice to the Secretary of the Department of Homeland Security to aid in the creation and expeditious implementation of critical and actionable policy and operational capacities across the spectrum of homeland security operations. The HSAC shall periodically report, as appropriate, to the Secretary on matters within the scope of that function. The HSAC serves as an advisory body with the goal of providing advice upon the request of the Secretary.

*Public Attendance:* Members of the public may register to attend the public session on a first-come, first-served basis per the procedures that follow. For security reasons, we request that any member of the public wishing to attend the public session provide his or her full legal name, date of birth and contact information no later than 5 p.m. EST on June 18, 2008, to Jennifer Myers or a staff member of the HSAC via e-mail at [HSAC@dhs.gov](mailto:HSAC@dhs.gov) or via phone at (202) 447-3135. Photo identification may be required for entry into the public session. Registration begins at 10 a.m. Those attending the public session of the meeting must be present and seated by 10:45 a.m. From 11 a.m. to 12 p.m., the HSAC will meet to review and deliberate recommendations from the Essential Technology Task Force (ETTF). The ETTF has focused on identifying priorities for DHS and relevant partners to improve acquisition of large scale technologies.

Closed portions of the meeting will include updates on operational challenges, intelligence briefings, and pre-decisional policies. During the closed portions of the meeting, speakers from various DHS components, including: Customs and Border Protection, U.S. Secret Service, Office of Intelligence and Analysis, Policy Directorate, Management Directorate, the Transportation Security Administration, U.S. Coast Guard,

Federal Emergency Management Agency, Immigration and Customs Enforcement and U.S. Citizenship and Immigration Services, will brief the members on successes, challenges and vulnerabilities affecting the component's mission. The briefings will include information on sensitive homeland procedures and the capabilities of the Department of Homeland Security components.

*Identification for Services for Individuals with Disabilities:* For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Jennifer Myers as soon as possible.

*Basis for Closure:* In accordance with Section 10(d) of the Federal Advisory Committee Act, it has been determined that this HSAC meeting concerns matters that "disclose investigative techniques and procedures" under 25 U.S.C. 552b(c)(9)(b) and are "likely to significantly frustrate implementation of a proposed agency action" within the meaning of 5 U.S.C. 552b(c)(7)(e) and that, accordingly, the meeting will be partially closed to the public.

Release of information presented during the briefings and the nature of the discussion could lead to premature disclosure of information on Department of Homeland Security actions that would be "likely to significantly frustrate implementation of a proposed agency action." Additionally, discussion of ongoing investigations with Department of Homeland Security enforcement components and outside law enforcement partners falls within the meaning of 5 U.S.C. 552b(7)(e) insofar as they will "disclose investigative techniques and procedures."

*Exhibit Open to Public:* DHS' Office of Public Affairs is hosting an exhibit open to the public to include component display and information stations. Public viewing begins at 10 a.m. and concludes at 1 p.m.

Dated: June 5, 2008.

**Stewart A. Baker,**

*Assistant Secretary, Office of Policy, Department of Homeland Security.*

[FR Doc. E8-13083 Filed 6-10-08; 8:45 am]

**BILLING CODE 4410-10-P**



**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****[USCG-2008-0099]****Collection of Information under Review by Office of Management and Budget: OMB Control Numbers: 1625-0109****AGENCY:** Coast Guard, DHS.**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the U.S. Coast Guard is forwarding one Information Collection Request (ICR), abstracted below, to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) requesting an extension of its approval for the following collection of information: 1625-0109, Drawbridge Operation Regulations. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Please submit comments on or before July 11, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG-2008-0099] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) or to OIRA. To avoid duplication, please submit your comments by only one of the following means:

(1) Electronic submission. (a) To Coast Guard docket at <http://www.regulation.gov>. (b) To OIRA by e-mail to: [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov).

(2) Mail or Hand delivery. (a) DMF (M-30), DOT, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(3) Fax. (a) To DMF, 202-493-2251. (b) To OIRA at 202-395-6566. To ensure your comments are received in time, mark the fax to the attention of the Desk Officer for the Coast Guard.

The DMF maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be

available for inspection or copying at room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://www.regulations.gov>.

A copy of the complete ICR is available through this docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from Commandant (CG-611), U.S. Coast Guard Headquarters (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593-0001. The telephone number is 202-475-3523.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arthur Requina, Office of Information Management, telephone 202-475-3523 or fax 202-475-3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202-366-9826, for questions on the docket.

**SUPPLEMENTARY INFORMATION:** The Coast Guard invites comments on whether this information collection request should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. Comments to Coast Guard must contain the docket number of this request [USCG-2008-0099]. For your comments to OIRA to be considered, it is best if they are received on or before the July 11, 2008.

**Public participation and request for comments:** We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to <http://www.regulations.gov>. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the paragraph on DOT's "Privacy Act Policy" below.

**Submitting comments:** If you submit a comment, please include the docket number [USCG-2008-0099], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We

recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them. The Coast Guard and OIRA will consider all comments and material received during the comment period.

**Viewing comments and documents:** Go to <http://www.regulations.gov> to view documents mentioned in this notice as being available in the docket. Enter the docket number [USCG-2008-0099] in the Search box, and click, "Go>>." You may also visit the DMF in room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Privacy Act:** Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or by visiting <http://DocketsInfo.dot.gov>.

**Previous Request for Comments.**

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (73 FR 12457, March 7, 2008) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

**Information Collection Request.**

**Title:** Drawbridge Operation Regulations.

**OMB Control Number:** 1625-0109.

**Type of Request:** Extension of currently approved collection.

**Affected Public:** The public and private owners of bridges over navigable waters of the United States.

**Abstract:** Section 499 of 33 U.S.C. authorizes the Coast Guard to change



operating schedules for drawbridges that cross over navigable waters of the United States. The Bridge Administration receives approximately 150 requests from bridge owners or the general public per year to change operating schedules of various drawbridges across the navigable waters of the United States. The information needed for the change to an operating schedule can only be obtained from the bridge owner and is generally provided to the Coast Guard in writing.

**Burden Estimate:** The estimated burden remains 150 hours a year.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: June 3, 2008.

**D.T. Glenn,**

*Rear Admiral, U. S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.*

[FR Doc. E8-13104 Filed 6-10-08; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[USCG-2008-0052]

#### Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers: 1625-New

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the U.S. Coast Guard is forwarding one Information Collection Request (ICR), abstracted below, to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) requesting an extension of their approval for the following collection of information: 1625-New, Proceedings of the Marine Safety and Security Council, the Coast Guard Journal of Safety and Security at Sea; online subscription request form. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Please submit comments on or before July 11, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG-2008-0052] to the

Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) or to OIRA. To avoid duplication, please submit your comments by only one of the following means:

(1) *Electronic submission.* (a) To Coast Guard docket at <http://www.regulations.gov>. (b) To OIRA by e-mail to: [nlesser@omb.eop.gov](mailto:nlesser@omb.eop.gov).

(2) *Mail or Hand delivery.* (a) DMF (M-30), DOT, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(3) *Fax.* (a) To DMF, 202-493-2251. (b) To OIRA at 202-395-6566. To ensure your comments are received in time, mark the fax to the attention of Mr. Nathan Lesser, Desk Officer for the Coast Guard.

The DMF maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://www.regulations.gov>.

A copy of the complete ICR is available through this docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from Commandant (CG-611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593-0001. The telephone number is 202-475-3523.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arthur Requina, Office of Information Management, telephone 202-475-3523 or fax 202-475-3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202-366-9826, for questions on the docket.

**SUPPLEMENTARY INFORMATION:** The Coast Guard invites comments on whether this information collection request should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the

quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR addressed. Comments to Coast Guard must contain the docket number of this request, [USCG-2008-0052]. For your comments to OIRA to be considered, it is best if they are received on or before the July 11, 2008 deadline.

**Public participation and request for comments:** We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to <http://www.regulations.gov>. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the paragraph on DOT's "Privacy Act Policy" below.

**Submitting comments:** If you submit a comment, please include the docket number [USCG-2008-0052], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them. The Coast Guard and OIRA will consider all comments and material received during the comment period.

**Viewing comments and documents:** Go to <http://www.regulations.gov> to view documents mentioned in this notice as being available in the docket. Enter the docket number [USCG-2008-0052] in the Search box, and click, "Go>>." You may also visit the DMF in room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m.

and 5 p.m., Monday through Friday, except Federal holidays.

**Privacy Act:** Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or by visiting <http://DocketsInfo.dot.gov>.

#### Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (73 FR 12456, March 7, 2008) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

#### Information Collection Request

**Title:** Proceedings of the Marine Safety and Security Council, the Coast Guard Journal of Safety and Security at Sea; online subscription request form.

**OMB Control Number:** 1625-New.

**Type of Request:** New collection.

**Affected Public:** Subscribers to the *Proceedings*.

**Abstract:** As a service to its potential subscribers, *Proceedings* seeks to add an online subscription request form to its Web site. Under Title 33 CFR 1.05–5, the Marine Safety and Security Council is composed of senior Coast Guard officials and acts as policy advisor to the Commandant and is the focal point of the Coast Guard regulatory system. The principal objective of *Proceedings of the Marine Safety and Security Council, the Coast Guard Journal of Safety and Security at Sea* is to inform the maritime industry it serves about the Coast Guard's operations and marine safety, security, environmental protection policies, regulations, and program goals.

**Burden Estimate:** The estimated burden is 415 hours annually.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: June 3, 2008.

**D.T. Glenn,**

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E8–13117 Filed 6–10–08; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS–R4–ES–2008–N00135; ABC Code: F2]

#### Construction of Two Single-Family Homes in Volusia County, FL

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice: receipt of application for an incidental take permit; request for comments.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce the availability of two Incidental Take Permit (ITP) Applications and Habitat Conservation Plans (HCPs). Today Homes Development, Inc. (applicant) requests two ITPs for a 1-year duration under the Endangered Species Act of 1973, as amended (Act). The applicant anticipates taking approximately 0.38 acre of Florida scrub-jay (*Alphelocoma coerulescens*)-occupied habitat incidental to construction of two single family homes in Volusia County, Florida (projects). The applicant's HCPs describe the mitigation and minimization measures the applicant proposes to address the effects of the projects to the scrub-jay.

**DATES:** We must receive any written comments on the ITP applications and HCPs on or before July 11, 2008.

**ADDRESSES:** If you wish to review the applications and HCPs, you may write the Field Supervisor at our Jacksonville Field Office, 6620 Southpoint Drive South, Suite 310, Jacksonville, FL 32216, or make an appointment to visit during normal business hours. If you wish to comment, you may mail or hand deliver comments to the Jacksonville Field Office, or you may e-mail comments to [paula\\_sisson@fws.gov](mailto:paula_sisson@fws.gov). For more information on reviewing documents and public comments and submitting comments, see **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Paula Sisson, Fish and Wildlife Biologist, Jacksonville Field Office (see **ADDRESSES**); telephone: 904/232–2580, ext. 126.

#### SUPPLEMENTARY INFORMATION:

##### Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying

information from public review, we cannot guarantee that we will be able to do so.

Please reference permit number TE171478–0 and TE176780–0 for Today Homes Development, Inc. in all requests or comments. Please include your name and return address in your e-mail message. If you do not receive a confirmation from us that we have received your e-mail message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**.

#### Background

The Florida scrub-jay is found exclusively in peninsular Florida and is restricted to xeric upland communities (predominately in oak-dominated scrub with open canopies) of the interior and Atlantic coast sand ridges. Increasing urban and agricultural development has resulted in habitat loss and fragmentation, which have adversely affected the distribution and numbers of scrub-jays. Remaining habitat is largely degraded due to the exclusion of fire, which is needed to maintain xeric uplands in conditions suitable for scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

#### Applicant's Proposal

The applicant is requesting take of approximately 0.38 ac of occupied scrub-jay habitat incidental to the projects. Both proposed projects are located in Section 09, Township 18, Range 30, in Orange City, Florida. The proposed projects currently include residential construction, including house pad, infrastructure, and landscaping. The applicant proposes to mitigate for the take of the Florida scrub-jay at a ratio of 2:1 based on Service Mitigation Guidelines. The applicant proposes to mitigate for the loss of 0.38 ac of occupied scrub-jay habitat by contributing a total of \$20,589.92 to the Florida Scrub-jay Conservation Fund administered by The Nature Conservancy. Funds in this account are earmarked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management. As minimization for impacts to the species, clearing activities during project construction will occur outside the scrub-jay nesting season (March 1–June 30).

We have determined that the applicant's proposal, including the proposed mitigation and minimization measures, would have minor or negligible effects on the species covered in the HCPs. Therefore, the ITPs are "low-effect" projects and qualify for

categorical exclusions under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. A low-effect HCP is one involving (1) minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

We will evaluate the HCPs and comments submitted thereon to determine whether the applications meet the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the applications meet those requirements, we will issue the ITPs for incidental take of the scrub-jay. We will also evaluate whether issuance of the section 10(a)(1)(B) ITPs comply with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in the final analysis to determine whether or not to issue the ITPs.

**Authority:** We provide this notice under Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

Dated: June 2, 2008.

**David L. Hankla,**

*Field Supervisor, Jacksonville Field Office.*

[FR Doc. E8-13045 Filed 6-10-08; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[F-14852-A, F-14852-B; AK-964-1410-KC-P]

#### Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of decision approving lands for conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Dot Lake Native Corporation. The lands are in the vicinity of Dot Lake, Alaska, and are located in:

#### Copper River Meridian, Alaska

T. 23 N., R. 5 E.,  
Secs. 28 and 33.

Containing approximately 1,260 acres.

T. 24 N., R. 5 E.,

Secs. 32 and 33.

Containing approximately 1,231 acres.

T. 23 N., R. 6 E.,

Secs. 2, 3, and 4.

Containing approximately 1,920 acres.

T. 21 N., R. 7 E.,

Secs. 10 and 15.

Containing approximately 1,280 acres.

T. 22 N., R. 7 E.,

Sec. 3, NW¼.

Containing approximately 140 acres.

T. 23 N., R. 7 E.,

Sec. 34, excluding NW¼ and Native

Allotment Application AA-83921.

Containing approximately 324 acres.

Aggregating approximately 6,155 acres.

The subsurface estate in these lands will be conveyed to Doyon, Limited when the surface estate is conveyed to Dot Lake Native Corporation. Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

**DATES:** The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 11, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

**ADDRESSES:** A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7504.

**FOR FURTHER INFORMATION CONTACT:** The Bureau of Land Management by phone at 907-271-5960, or by e-mail at [ak.blm.conveyance@ak.blm.gov](mailto:ak.blm.conveyance@ak.blm.gov). Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

**Jason Robinson,**

*Land Law Examiner, Land Transfer Adjudication I.*

[FR Doc. E8-13054 Filed 6-10-08; 8:45 am]

**BILLING CODE 4310-JA-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR-957-6333-PH; HAG08-0115]

#### Filing of Plats of Survey: Oregon/ Washington

**AGENCY:** U.S. Department of the Interior, Bureau of Land Management.

**ACTION:** Notice.

**SUMMARY:** The plats of survey of the following described lands were officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, on March 21, 2008.

#### Willamette Meridian

##### Washington

T. 37 N., R. 17 E., accepted January 30, 2008.

T. 38 N., R. 17 E., accepted January 30, 2008.

T. 34 N., R. 2 E., accepted February 29, 2008.

##### Oregon

T.29 S., Rs. 7 & 8 W., accepted February 8, 2008.

T. 23 S., R. 4 W., accepted February 8, 2008.

T. 32 S., R. 6 W., accepted February 29, 2008.

The plats of survey of the following described lands were officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, on April 24, 2008.

#### Willamette Meridian

##### Washington

T. 21 N., R. 4 W., accepted March 21, 2008.

##### Oregon

T. 8 N., R. 10 W., accepted March 21, 2008.

T. 7 & 8 N., R. 10 W., accepted March 21, 2008.

T. 2 S., R. 6 W., accepted March 28, 2008.

T. 6 S., R. 2 E., accepted March 28, 2008.

T. 6 S., R. 4 E., accepted March 28, 2008.

T. 10 S., R. 2 E., accepted March 28, 2008.

T. 14 S., R. 7 W., accepted March 28, 2008.

T. 37 S., R. 1 W., accepted March 28, 2008.

T. 38 S., R. 2 E., accepted March 28, 2008.

T. 38 S., R. 5 E., accepted March 28, 2008.

T. 9 S., R. 7 W., accepted March 31, 2008.

The plats of survey of the following described lands were officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, on May 20, 2008.

#### Willamette Meridian

##### Washington

T. 36 N., R. 25 E., accepted May 5, 2008.

##### Oregon

T. 17 S., R. 7 W., accepted April 4, 2008.

T. 15 S., R. 6 W., accepted April 4, 2008.

T. 16 S., R. 1 W., accepted April 4, 2008.

T. 16 S., R. 2 W., accepted April 4, 2008.

T. 16 S., R. 7 W., accepted April 4, 2008.

T. 29 S., R. 8 W., accepted April 7, 2008.

T. 16 S., R. 1 W., accepted April 17, 2008.

T. 33 S., R. 10 W., accepted May 5, 2008.

A copy of the plats may be obtained from the Land Office at the Oregon/Washington

State Office, Bureau of Land Management, 333 SW., 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

**FOR FURTHER INFORMATION CONTACT:** Chief, Branch of Geographic Sciences, Bureau of Land Management, (333 S.W. 1st Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: May 29, 2008.

**Fred O'Ferrall,**

*Branch of Lands and Minerals Resources.*

[FR Doc. E8-13105 Filed 6-10-08; 8:45 am]

**BILLING CODE 4310-33-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NM-940-08-1420-BJ]

#### Notice of Filing of Plats of Survey; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

#### SUPPLEMENTARY INFORMATION:

##### New Mexico Principal Meridian, New Mexico

The plat representing the dependent resurvey and Metes-and-Bounds survey for section 35 for T. 11 N., R. 16 W., accepted January 31, 2008, for Group 1061 NM.

The plat representing the dependent resurvey and subdivision of sections for T. 10 N., R. 1 W., accepted January 17, 2008, for Group 1052 NM.

The plat representing the dependent resurvey for T. 9 N., R. 1 W., accepted January 17, 2008, for Group 1052 NM.

The plat in nineteen sheets representing the dependent resurvey and subdivision of sections and meanders of the San Juan River for T. 29 N., R. 16 W., accepted February 19, 2008, for Group 1037 NM.

The plat representing the dependent resurvey for T. 11 N., R. 1 W., accepted January 17, 2008, for Group 1052 NM.

The plat in three sheets representing the dependent resurvey, corrective resurvey and survey for T. 9 N., R. 17 E., accepted January 29, 2008, for Group 907 NM.

The plat representing the dependent resurvey and survey, for T. 21 N., R. 1

W., accepted January 31, 2008, for Group 1064 NM.

The plat in two sheets representing the Toadlena School Tract, for T. 23 N., R. 19 W., accepted February 19, 2008, for Group 1025 NM.

The plat representing the dependent resurvey and survey, for T. 17 S., R. 25 E., accepted April 2, 2008, for Group 1074 NM.

The plat in three sheets representing the dependent resurvey, subdivision of sections and metes-and-bounds survey for T. 15 N., R. 17 W., accepted January 24, 2008, for Group 1054 NM.

The plat in four sheets representing a metes-and-bounds survey for the Town of Alameda Grant accepted March 12, 2008, for Group 1003 NM.

The plat in two sheets representing the dependent resurvey and survey, T. 12 N., R. 7 E., accepted April 24, 2008, for Group 1046 NM.

##### Indian Meridian, Oklahoma

The supplemental plat representing T. 10 N., R. 23 E., accepted January 31, 2008, OK.

The plat representing the dependent resurvey and subdivision for T. 2 S., R. 16 W., accepted January 17, 2008, for Group 149 OK.

The plat representing the dependent resurvey and subdivision of section 34 for T. 8 N., R. 10 W., accepted February 19, 2008, for Group 170 OK.

The plat representing the dependent resurvey and subdivision of section 13 for T. 1 S., R. 2 W., accepted January 16, 2008, for Group 171 OK.

The supplemental plat representing T. 10 N., R. 27 E., accepted March 12, 2008, in two sheets for OK.

The plat representing the dependent resurvey for T. 2 N., R. 11 W., accepted April 4, 2008, for Group 163 OK.

The supplemental plat in two sheets representing T. 11 N., R. 27 E accepted March 12, 2008, OK.

The plat representing the dependent resurvey and survey, for T. 14 N., R. 13 W., accepted April 2, 2008, for Group 153 OK.

The supplemental plat representing T. 10 N., R. 23 E. accepted April 24, 2008, OK.

##### Texas

The plat representing the Kickapoo Traditional tribe of Texas Reservation Boundary, Maverick County, Texas, metes and bounds Survey accepted March 10, 2008 for Group 9 TX.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed.

A person or party who wishes to protest against any of these surveys must file a written protest with the New Mexico State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty days after the protest is filed.

#### FOR FURTHER INFORMATION CONTACT:

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, and P.O. Box 27115, Santa Fe, New Mexico 87502-0115. Copies may be obtained from this office upon payment of \$1.10 per sheet.

Dated: June 3, 2008.

**Robert A. Casias,**

*Branch Chief Cadastral Surveyor, New Mexico.*

[FR Doc. E8-13126 Filed 6-10-08; 8:45 am]

**BILLING CODE 4310-FM-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CO-922-08-1310-FI; COC68787]

#### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

**SUMMARY:** Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC68787 from Gunnison Energy Corp., and SG Interests VII, LTD, for lands in Gunnison County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

#### FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10.00 per acre or fraction thereof, per year and 16⅓ percent, respectively. The lessee has paid the required \$500 administrative fee and \$163 to reimburse the Department for the cost of this **Federal Register** notice. The lessees

have met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC68787 effective February 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: June 6, 2008.

**Milada Krasilinec,**

*Land Law Examiner.*

[FR Doc. E8-13115 Filed 6-10-08; 8:45 am]

BILLING CODE 4310-JB-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CO-922-08-1310-FI; COC68791]

#### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

**SUMMARY:** Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC68791 from Gunnison Energy Corp., and SG Interests VII, LTD, for lands in Gunnison County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10.00 per acre or fraction thereof, per year and 16 $\frac{2}{3}$  percent, respectively. The lessee has paid the required \$500 administrative fee and \$163 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC68791 effective February 1, 2008, under the original terms and conditions of the lease and the

increased rental and royalty rates cited above.

Dated: June 6, 2008.

**Milada Krasilinec,**

*Land Law Examiner.*

[FR Doc. E8-13119 Filed 6-10-08; 8:45 am]

BILLING CODE 4310-JB-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CO-922-08-1310-FI; COC68790]

#### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

**SUMMARY:** Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC68790 from Gunnison Energy Corp., and SG Interests VII, LTD, for lands in Gunnison County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10.00 per acre or fraction thereof, per year and 16 $\frac{2}{3}$  percent, respectively. The lessee has paid the required \$500 administrative fee and \$163 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC68790 effective February 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: June 6, 2008.

**Milada Krasilinec,**

*Land Law Examiner.*

[FR Doc. E8-13120 Filed 6-10-08; 8:45 am]

BILLING CODE 4310-JB-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CO-922-08-1310-FI; COC68789]

#### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

**SUMMARY:** Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC68789 from Gunnison Energy Corp., and SG Interests VII, LTD, for lands in Gunnison County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10.00 per acre or fraction thereof, per year and 16 $\frac{2}{3}$  percent, respectively. The lessee has paid the required \$500 administrative fee and \$163 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC68789 effective February 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: June 6, 2008.

**Milada Krasilinec,**

*Land Law Examiner.*

[FR Doc. E8-13121 Filed 6-10-08; 8:45 am]

BILLING CODE 4310-JB-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CO-922-08-1310-FI; COC68788]

#### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

**SUMMARY:** Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC68788 from Gunnison Energy Corp., and SG Interests VII, LTD, for lands in Gunnison County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10.00 per acre or fraction thereof, per year and 16 2/3 percent, respectively. The lessee has paid the required \$500 administrative fee and \$163 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC68788 effective February 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: June 6, 2008.

Milada Krasilinec,  
Land Law Examiner.

[FR Doc. E8–13124 Filed 6–10–08; 8:45 am]

BILLING CODE 4310–JB–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ID–410–1232–IA–ID27–241A, DEG080003]

#### Notice of Restriction Order No. ID–410–03, Wallace Forest Conservation Area; Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Restriction.

**SUMMARY:** This restriction order prohibits overnight camping by any person or groups of persons within the Wallace Forest Conservation Area described as all public lands administered by the Bureau of Land

Management (BLM) located in Boise Meridian.

T. 50 N., R. 2 W.,

Sec. 31, lots 5, 6, 7, 8, E 1/2 NE 1/4 SW 1/4.

T. 50 N., R. 3 W.,

Sec. 26, portion of SW lying S & W of Sunnyside Road;

Sec. 35, portion of lots 1, 2, 7, lots 4, 5, 6, N 1/2 NW 1/4, W 1/2 NE 1/4.

T. 49 N., R. 2 W.,

Sec. 6, lot 4.

T. 49 N., R. 3 W.,

Sec. 1, portion of lots 1, 2, 5, 6.

All are contiguous lands in Kootenai County, Idaho.

The area described above is hereby closed to public occupancy and use daily, beginning one hour after sunset and continuing until one hour before sunrise. A map depicting the restricted area is available for public inspection at the Bureau of Land Management, Coeur d'Alene Field Office, 3815 Schreiber Way, Coeur d'Alene, Idaho. These restrictions become effective immediately and shall remain in effect until revoked or replaced with supplemental rules, or both.

**FOR FURTHER INFORMATION CONTACT:** Brian White at the BLM Coeur d'Alene Field Office, 3815 Schreiber Way, Coeur d'Alene, ID 83815 or call (208) 769–5031 or via e-mail at [brian\\_white@blm.gov](mailto:brian_white@blm.gov).

**SUPPLEMENTARY INFORMATION:** The authority for establishing these restrictions is 43 CFR 8364.1.

The 2007 Coeur d'Alene Resource Management Plan (Action RC–1.2.6, p. 47) calls for “establishing additional rules as needed in response to changing situations” under Objective RC–1.2. This objective applies specifically to recreation sites within the Coeur d'Alene Lake Special Recreation Management Area (SRMA). The subject public lands are entirely within this SRMA.

The BLM initiated a public participation process last year to get ideas and comments from the public about future management of this area. Three public workshops were held, including one on-site, which generated significant public interest. Area residents complained of loud parties, bonfires, and lewd activities visible from their homes. Other participants and the vast majority of public comments did not support overnight use or camping within the area.

Supplementary rules will be published according to decisions made within the Environmental Assessment and Recreation Project Plan for the Wallace Forest Conservation Area, which are expected to be completed in 2008.

*The camping restriction is necessary to:*

- (1) Protect public health and safety;
- (2) Protect persons, property, public land and resources from vandalism and other damage;
- (3) Protect water quality from improper disposal of human waste;
- (4) Prevent proliferation of illegal campfires; and
- (5) Prevent other activities which are illegal under state or Federal regulations, or both.

*These restrictions do not apply to:*

- (1) Any Federal, state or local government officer or member of an organized rescue or fire fighting force while in the performance of an official duty;
- (2) Any Bureau of Land Management employee, agent, contractor, or cooperator while in the performance of an official duty; and
- (3) Any person or group expressly authorized by the BLM to use the subject public land.

**Penalties.** Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

Dated: April 23, 2008.

**Eric R. Thomson,**

*Coeur d'Alene Field Manager.*

[FR Doc. E8–13106 Filed 6–10–08; 8:45 am]

BILLING CODE 4310–GG–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Coastal Wetlands Restoration at Prisoners Harbor, Santa Cruz Island, Channel Islands National Park, Santa Barbara County, CA; Notice of Intent to Prepare an Environmental Impact Statement

**Summary:** The National Park Service, in accordance with the provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), will prepare an Environmental Impact Statement (EIS) to consider suitable means for restoration of a wetland and stream corridor at Prisoners Harbor and lower Canada del Puerto drainage on Santa Cruz Island, Santa Barbara County, California. The Prisoners Harbor area is part of Channel Islands National Park managed by the National Park Service (NPS). The EIS will analyze alternatives for ecological restoration of the wetland and lower stream corridor, ensuring public access, and protecting cultural and historical resources.

**Background:** Channel Islands National Park is headquartered in

Ventura, California. Congress established the park “[i]n order to protect the nationally significant natural, scenic, wildlife, marine, ecological, archeological, cultural, and scientific values of the Channel Islands” (Pub. L. 96–199). The park proposes to restore a functional, self-sustaining ecosystem at a former 9-acre backbarrier coastal wetland site known as Prisoners Harbor and an associated 40-acre stream corridor in the lower Canada del Puerto watershed on Santa Cruz Island. The proposed wetland restoration site includes what was once the largest backbarrier coastal wetland on the Channel Islands. The wetland and stream corridor have been extensively modified over the past 150 years by filling of wetlands, intentional planting and accidental introduction of non-native vegetation such as stone pines, eucalyptus, and kikuyu grass in the area, and construction of a levee, buildings, corral, and unsurfaced roads. These modifications to the creek and floodplain have altered channel hydraulics, resulting in reduced ecosystem function, and contributed to the estimated 95% decline of California’s wetlands statewide.

The loss of natural wetland and riparian ecosystems in the Prisoners Harbor area has resulted in locally diminished habitat for federally listed Santa Cruz Island barberry, Santa Cruz Island silver lotus, Santa Cruz Island gooseberry, endemic Santa Cruz Island scrub jay, Santa Cruz Island deer mouse, the rare Channel Islands slender salamander, western harvest mouse, loggerhead shrike, other passerine birds, and migratory waterfowl. Proliferation of non-native eucalyptus trees in the riparian corridor has severely reduced plant and wildlife-diversity and negatively affected habitat for species of special concern and passerine birds.

**Preliminary Alternatives and Environmental Issues:** The park proposes to restore wetland and riparian ecosystem function by removing fill from the historic wetland, reconnecting the Canada del Puerto stream with its floodplain, removing non-native eucalyptus and other vegetation in the lower drainage, and recreating habitat for special status species (both flora and fauna), passerine birds, and migratory waterfowl. Additionally the project proposes to protect significant cultural resources, and provide for an enhanced visitor experience. A successful project would meet the following goals:

- Restore functional wetland and riparian ecosystems and reduce the impact of non-native species on local biological diversity.

- Consistent with restoring functional ecosystems, recreate and maintain habitat adequate to support populations of special status species, passerine birds, and migratory waterfowl.

- Develop a restoration design that identifies and, to the extent possible, mitigates factors that reduce the site’s full restoration potential.

- Protect archaeological resources from erosion during both normal and flood conditions.

- Provide access to the Central Valley inland from the affected area, NPS property east of Prisoners Harbor, and Nature Conservancy inholdings on NPS property upstream from the area of potential effect.

- Reduce risk of exposure to flooding that could damage the roadway and historic buildings.

- Provide visitor access and resource interpretation that are compatible with protection of resources.

- Enhance visitor knowledge and understanding of the prehistory, recent human history, and natural history of the Prisoners Harbor area.

Channel Islands National Park seeks public input to assist with identifying issues and developing a suitable range of alternatives for restoration of the lower Canada del Puerto watershed and Prisoners Harbor wetlands area. Restoration methods could include topographic alterations aimed at recovering natural hydrologic and ecological processes. These potential alterations could change the current hydrologic regime within the proposed project area, leading to either resumption of seasonal flooding of a fully restored wetland/floodplain or limited flooding of a partially restored wetland/floodplain. A “no-action” alternative, entailing no changes in current hydrologic regime, will also be assessed. An archeological site and some historic structures are located within the area of potential effect. Any restoration actions undertaken would be designed to ensure flood risks to the archeological site and historic resources will not be aggravated beyond current conditions and that influence of non-native species, including eucalyptus, on a restored ecosystem dominated by native species is reduced. As part of the effort to develop preliminary alternatives, the NPS will explore options for improved public access and enhancing educational opportunities consistent with ecosystem restoration.

Preliminary public outreach was initiated by the park in 2007. Concern was expressed about the possibility of removing cattle corrals constructed on filled coastal wetland. The corrals were built in the 1950’s as part of rancher

Carrie Stanton’s conversion to a cattle operation. The corrals are considered a “small scale feature” in the 2004 Cultural Landscape Inventory and deemed to be a contributing element to the eligibility of the Santa Cruz Island Ranching District to the National Register of Historic Places. The park has acknowledged this concern and will work with the State Historic Preservation Office in developing mitigation measures common to all alternatives or safeguards specific to a particular alternative if necessary. Other issues or concerns known at this time include potential effects upon: Threatened and endangered species protected under the federal and state Endangered Species Acts, floodplain and stream corridor, native flora and fauna; historic and archeological resources, land use, and opportunities for and constraints on public use.

**Public Scoping and Comment Process:** Notice is hereby given that the final public scoping phase is underway, with the express purpose of eliciting additional public comment regarding a suitable range of alternatives, the nature and extent of potential environmental impacts and benefits, and appropriate mitigation strategies that should be addressed in the forthcoming conservation planning and environmental impact analysis process. For those who have commented previously, it is not necessary to re-submit comments. Federal, state, and local agencies, Tribes, and interested organizations are also encouraged to participate in the scoping process. Whether California state or local involvement in the environmental impact analysis process is necessary is yet to be determined. If an environmental clearance document is required under the California Environmental Quality Act (CEQA), the NPS will coordinate the NEPA/CEQA process with the designated state agency (or agencies).

A timely opportunity to learn more about the proposed restoration and provide information is a public meeting to be held during summer 2008. Information expected to be provided at the public meeting includes the history of the Prisoners Harbor/Canada del Puerto area, purpose and need for the proposed restoration, opportunities and constraints in developing the restoration design, potential alternative courses of action with regards to restoration, potential effects of these courses of action, and appropriate strategies for mitigation and monitoring. All interested individuals, organizations, and agencies are encouraged to provide comments or suggestions. For those



persons unable to attend the meeting, information about the project will be available at <http://parkplanning.nps.gov> or by contacting the park as noted below.

All written scoping comments must be postmarked or transmitted not later than 45 days following publication of this notice in the **Federal Register** (immediately upon publication of this notice, the confirmed deadline for comments to be submitted will be posted on the park Web site). Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. To provide comments or information pertinent to the proposal, inquire about the public meeting, or to request a printed copy of the scoping document, please contact Paula Power, Channel Islands National Park, Attn: Prisoners Harbor Coastal Wetland Restoration Project, 1901 Spinnaker Drive, Ventura, CA 93001, telephone (805) 658-5784; FAX (805) 658-5799; e-mail [paulapower@nps.gov](mailto:paulapower@nps.gov). Duplicate informational updates will be regularly posted on the park Web site [http://www.nps.gov/chis/home\\_mngmntdocs.htm](http://www.nps.gov/chis/home_mngmntdocs.htm) and also at <http://parkplanning.nps.gov>.

**Decision Process:** At this time, the draft EIS is expected to be available for public review in early 2009; following due consideration of all public and agency comments, it is expected that the final environmental document will be completed in late 2009. As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region. Subsequently the Superintendent, Channel Islands National Park, would be responsible for implementing the approved restoration and management actions.

Dated: April 28, 2008.

**Patricia L. Neubacher,**

*Acting Regional Director, Pacific West Region.*  
[FR Doc. E8-12965 Filed 6-10-08; 8:45 am]

**BILLING CODE 4310-F6-M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Off-Road Vehicle Management Plan (ORV Management Plan), Environmental Impact Statement (EIS), Lake Meredith National Recreation Area, Texas

**AGENCY:** National Park Service,  
Department of the Interior.

**ACTION:** Notice of Intent To Prepare an Environmental Impact Statement (EIS) for an Off-Road Vehicle Management Plan (ORV Management Plan) for Lake Meredith National Recreation Area, Texas.

**SUMMARY:** Pursuant to the National Environmental Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service is preparing an Environmental Impact Statement for an Off-Road Vehicle Management Plan (ORV Management Plan) for Lake Meredith National Recreation Area, Texas. This effort will result in an ORV Management Plan/EIS that will be used to guide the management and control of ORVs at the Recreation Area for approximately the next 15 to 20 years. It will also form the basis for a special regulation that will regulate ORV use at the Recreation Area. The ORV Management Plan/EIS will assess potential environmental impacts associated with a range of reasonable alternatives for managing ORV impacts on park resources such as soils, wetlands, wildlife, cultural resources, visitor experience, and public safety.

Lake Meredith Recreation Area was established in 1964 for the administration of public recreational facilities at the Sanford Reservoir area, Canadian River project, Texas. In 1990 Congress designated Lake Meredith a National Recreation Area to "provide for public outdoor recreation use and enjoyment of the lands and waters associated with Lake Meredith in the State of Texas, and to protect the scenic, scientific, cultural, and other values contributing to the public enjoyment of such lands and waters," (Pub. L. 101-628, 16 U.S.C. 460eee, November 28, 1990). Lake Meredith offers many recreational uses including boating, swimming, fishing, hunting and ORV use. Lake Meredith currently has two areas designated as ORV areas, Rosita (~1,740 acres) and Blue Creek (~275 acres). These areas were designated by special regulation, 36 CFR 7.57. Both areas were utilized by the local community for recreational use prior to the establishment of the Sanford Reservoir Project in 1965.

Executive Order 11644, issued in 1972 and amended by Executive Order

11989 in 1977, states that Federal agencies allowing ORV use must designate the specific areas and trails on public lands on which the use of ORVs may be permitted, and areas in which the use of ORVs may not be permitted. Agency regulations to authorize ORV use provide that designation of such areas and trails will be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands. Executive Order 11644 was issued in response to the widespread and rapidly increasing use of ORVs on the public lands—"often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity." Code of Federal Regulations (CFR) 36 § 4.10 requires that "Routes and areas designated for off-road motor vehicle use shall be promulgated as special regulations." "In addition, such routes and areas may only be designated in national recreation areas, national seashores, national lakeshores and national preserves." Therefore, in accordance with the Executive Order, the purpose of this plan/EIS is to manage ORV use in compliance with the Recreation Area's enabling legislation, NPS management policies, and other laws and regulations to ensure protection of the natural, cultural, and recreational values of the Recreation Area's environment for present and future generations.

An ORV Management Plan is needed to address the inconsistent management of ORV use over time, address the impacts to both cultural and natural resources, and address ORV use outside of the authorized areas. Specifically, an ORV Management Plan is needed to: (1) Comply with Executive Orders 11644 and 11989 respecting ORV use, and with NPS laws, regulations (36 CFR 4.10), and policies to minimize impacts to Recreation Area resources and values; (2) Provide for sustainable recreational ORV use areas; (3) Address the lack of an approved plan, which has led to ORV use outside of authorized areas; (4) Address resource impacts resulting from ORV use; and (5) Address the change in numbers, power, range and capabilities of ORVs. The ORV Management Plan/DEIS will cover all lands administered by the NPS at the Recreation Area.

Through internal scoping efforts, several draft objectives were outlined for the EIS:

**Visitor Use and Safety:** Manage ORV use to minimize conflicts among different ORV users; promote safe

operation of ORVs and safety of all visitors.

**Management:** Build stewardship through public awareness and understanding of NPS resource management and visitor use policy and responsibilities as they pertain to the recreation area and ORV management; develop a monitoring plan that allows the park to establish the number of ORVs the park is able to support.

**Park Operations:** Identify needs and costs necessary to implement an ORV plan; minimize impacts to park operations and costs necessary to implement an ORV plan.

**Natural Resources:** Minimize adverse impacts to threatened, endangered, and other protected species and their habitats; define effective strategies for soil erosion control and restoration of plant resources to support wildlife populations.

**Cultural Resources:** Preserve and protect significant cultural resources within the recreation area; work with interested parties to identify cultural resources that could be adversely affected by ORV use.

The draft and final ORV Management Plan/EIS will be made available to all known interested parties and appropriate agencies. Full public participation by Federal, State, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

**DATES:** The Park Service will accept comments from the public through July 11, 2008. To determine the scope of issues to be addressed in the ORV Management Plan/EIS and to identify significant issues related to the ORV management at the Recreation Area, NPS will be conducting public scoping meetings on July 8, 9, and 10, 2008. The NPS is planning to conduct the three meetings in Fritch, Dumas, and Amarillo, Texas, respectively. Representatives of the NPS will be available to discuss issues, resource concerns, and the planning process at each of the public meetings. The locations, times, and dates of the public meetings will be published in local newspapers and posted on the NPS Planning, Environment, and Public Comment (PEPC) Web site at <http://parkplanning.nps.gov/LAMR>.

**ADDRESSES:** Written comments or requests for information should be addressed to Superintendent, Cindy Ott-Jones, Lake Meredith National Recreation Area, Alibates Flint Quarries National Monument, P.O. Box 1460, Fritch, Texas 79036-1460. In addition, comments may be entered on-line in the

NPS PEPC Web site at <http://parkplanning.nps.gov/LAMR>. To comment using PEPC, select the "Lake Meredith National Recreation Area ORV Management Plan and Regulation" project, select "documents," select this "Notice of Intent," and then select "comment" and enter your comments. Further information about this project may also be found on the PEPC Web site listed above, including links to information about the NEPA planning process.

**FOR FURTHER INFORMATION CONTACT:**

Superintendent, Cindy Ott-Jones, Lake Meredith National Recreation Area, Alibates Flint Quarries National Monument, P.O. Box 1460, Fritch, Texas 79036, by e-mail at [Cindy.Ott-Jones@nps.gov](mailto:Cindy.Ott-Jones@nps.gov).

**SUPPLEMENTARY INFORMATION:** If you wish to comment on this project, you may submit your comments by any one of several methods. You may mail comments to Office of the Superintendent, Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument, P.O. Box 1460, Fritch, Texas 79036-1460. You may also comment via the Internet at <http://parkplanning.nps.gov>. If you do not receive a confirmation from the system that we have received your Internet message, contact the park directly at Office of the Superintendent, Cindy Ott-Jones at 806-857-3151. Finally, you may hand-deliver comments to Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument, 419 E. Broadway, Fritch, Texas 79036.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Date: May 28, 2008.

**John T. Crowley,**

*Acting Regional Director, Intermountain Region, National Park Service.*

[FR Doc. E8-12839 Filed 6-10-08; 8:45 am]

**BILLING CODE 4310-3A-M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### General Management Plan, Record of Decision, Saguaro National Park, Arizona

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of Availability of a Record of Decision on the Final Environmental Impact Statement I General Management Plan, Saguaro National Park.

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision (ROD) for the General Management Plan, Saguaro National Park, Arizona. On April 2, 2008, the Regional Director, Intermountain Region approved the Record of Decision. As soon as practicable after March 31, 2008, on which the 30-day waiting period ends, the National Park Service will start implementing the selected action as in the FEIS issued on February 29, 2008, the date the FETS was published in the Environmental Protection Agency's **Federal Register** notice (Volume 73, Number 41, Page 11112). The ROD explains that alternative 2 is the selected action over no-action and the other action alternative. To reduce habitat fragmentation, the selected action emphasizes ecological processes and biological diversity by creating and preserving wildlife movement corridors among isolated habitats, while still providing a range of visitor opportunities. The selected action includes a parkwide management zone for the preservation of cultural resources. The no-action alternative would mean no change from existing conditions. The other action alternative would mean some but less emphasis on wildlife movement corridors among isolated habitats to address habitat fragmentation, and more visitor opportunities. The selected action calls for road, trail, and visitor center improvements as well as monitoring for certain natural and cultural resources and vehicular traffic patterns for preservation and safety, respectively.

The Record of Decision includes a statement of the decision made, synopses of the other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, and findings of no unacceptable impacts and no impairment to park resources and values. There is a listing of measures to

minimize environmental harm, and an overview of public involvement in the decision-making process.

**FOR FURTHER INFORMATION CONTACT:**

Superintendent Sarah Craighead, Saguaro National Park, 3693 South Old Spanish Trail, Tucson, AZ 85730-5601, [sarah\\_craighead@nps.gov](mailto:sarah_craighead@nps.gov), 520-733-5101.

**SUPPLEMENTARY INFORMATION:** Copies of the Record of Decision may be obtained from the above contact or online at <http://parkplanning.nps.gov/sagu>.

Dated: April 2, 2008.

**Michael D. Snyder,**

Regional Director, Intermountain Region, National Park Service.

[FR Doc. E8-12835 Filed 6-10-08; 8:45 am]

**BILLING CODE 4310-08-M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Intent To Prepare an Environmental Impact Statement; Poplar Point Redevelopment Project and Proposed National Park Service and U.S. Park Police Facilities Relocation

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement and for scoping on the redevelopment of Poplar Point and proposed relocation of certain National Park Service and U.S. Park Police facilities in Washington, D.C.

**SUMMARY:** Pursuant to the *National Environmental Policy Act of 1969* (NEPA), 42 U.S.C. 4321 *et seq.*, the National Park Service (NPS) with the District of Columbia government (District), acting as joint lead agencies, will prepare an Environmental Impact Statement (EIS) to aid their decision-making under Title III of the *Federal and District of Columbia Government Real Property Act of 2006*, Pub. L. 109-396, 120 Stat. 2711 (2006) (D.C. Lands Act). During this NEPA process, the NPS and the District will be complying with applicable laws and regulations, including Section 106 of the National Historic Preservation Act, and those pertaining to activities within floodplains. Other Federal and District agencies may serve as cooperating agencies and they are invited to contact the NPS and the District. Scoping commences with this notice. Written comments on the scope of issues to be addressed in the EIS are requested, and a public meeting has been scheduled.

**DATES:** A public meeting to obtain input on the scope of issues to be addressed in the EIS is scheduled for June 24, 2008, at 7 p.m. at Matthews Memorial Baptist Church, 2616 Martin Luther King Avenue, SE., Washington, DC.

Written comments from the public and others are sought. Comments will be considered by both NPS and the District. For these comments to be most helpful to the scoping process, they must be received within 45 days from the date of publication of this notice. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Government agencies who will be or seek to be cooperating agencies are requested to get in touch with NPS, the District, or both as early in the process as possible.

**ADDRESSES:** The scoping meeting will be held at 7 p.m. at Matthews Memorial Baptist Church, 2616 Martin Luther King Avenue, SE., Washington, DC. Potential cooperating agencies should contact Peter May, Associate Regional Director for Lands, Resources and Planning, 1100 Ohio Drive SW., Washington, DC 20242, and/or the Office of the Deputy Mayor for Planning and Economic Development, Attention: Poplar Point Project Manager, 1350 Pennsylvania Avenue, NW., Suite 317, Washington, DC 20004, or <http://www.poplarpointeis.com>. Comments may be submitted electronically through the NPS Planning, Environment and Public Comment (PEPC) Web site at <http://parkplanning.nps.gov/NACE>; or by mail to: Superintendent, National Capital Parks—East, RE: Poplar Point Redevelopment, 1900 Anacostia Drive, SE., Washington, DC 20020. To be added to a mailing list about this project: contact Superintendent, National Capital Parks—East, RE: Poplar Point Redevelopment, 1900 Anacostia Drive, SE., Washington, DC 20020.

**FOR FURTHER INFORMATION CONTACT:** The NPS and the District may both be contacted. For the NPS: Superintendent, National Capital Parks—East, RE: Poplar Point Redevelopment, 1900 Anacostia Drive, SE., Washington, DC 20020. For the District: Office of the Deputy Mayor for Planning and Economic Development, Attention: Poplar Point Project Manager, 1350 Pennsylvania

Avenue, NW., Suite 317, Washington, DC 20004 or <http://www.poplarpointeis.com>.

**SUPPLEMENTARY INFORMATION:** The D.C. Lands Act calls for the redevelopment of Poplar Point (the Site), by the District and, should the NPS and the District jointly determine that it is no longer appropriate for the NPS and U.S. Park Police (USPP), which is part of the NPS, to remain in their current Poplar Point facilities, new permanent replacement facilities will be provided by the District. The EIS will analyze alternatives for the District's redevelopment of the Site and for NPS and USPP replacement facilities which may be located elsewhere in Washington, D.C., and a no-action alternative. This EIS will be used in the decision-making processes for this relocation and redevelopment which are pursuant to the D.C. Lands Act. Much of the Site is within National Capital Parks—East of the National Park System and, by law, as the NPS and USPP facilities situation is resolved, these lands will go to the District, possibly through a sequence of multiple conveyances of title.

Poplar Point occupies a prime and highly visible parcel along the eastern bank of the Anacostia River, directly across from the Washington Navy Yard. The Site includes, but is not limited, to "Poplar Point" as defined in Section 304 of the D.C. Lands Act, and is generally bounded by the Anacostia River to the north, the Frederick Douglass Bridge to the west, the 11th Street Bridge to the east, and the Anacostia Freeway (Interstate 295) and Suitland Parkway to the south. It is approximately 130 acres, mostly under NPS jurisdiction, containing the NPS and USPP facilities and 60 acres of managed meadows. The Site will increase to approximately 150 acres when the Frederick Douglass Bridge is realigned further to the South; the District already has jurisdiction of the land underneath the freeway infrastructure leading to that bridge. The Site also contains the Anacostia Metro Station and a Washington Metropolitan Area Transit Authority (WMATA) parking garage.

The NPS and USPP presently operate in approximately 100,000 square feet of facilities at the Site. The NPS and USPP relocation involves the NPS and District agreeing on a new location and on facilities design, followed by the District providing such facilities to the NPS at no cost to the NPS. Options for relocation include moving to other land in the District, or relocation at the Site. A determination could also be made for

the NPS and USPP to remain in their current facilities.

Pursuant to the D.C. Lands Act, the redevelopment of Poplar Point will include approximately 70 acres of parkland in perpetuity that may include wetlands, landscaped areas, pedestrian walkways, bicycle trails, seating, open-sided shelters, natural areas, recreational use areas and memorial sites. For the remaining acreage of the Site, the District is considering proposals for a cultural institution or museum, transit, a sports complex or stadium, and residential and commercial uses.

Dated: May 19, 2008.

**Lisa A. Mendelson-Ielmini,**

*Deputy Regional Director, National Capital Region.*

[FR Doc. E8-12837 Filed 6-10-08; 8:45 am]

**BILLING CODE 4312-JK-M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### **Plan of Operations for Reclamation of the Rafferty Fee Lease—Well No. 1 Site, Big Thicket National Preserve, Texas**

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of Availability of a Plan of Operations for reclamation of the Rafferty Fee Lease—Well No. 1 site at Big Thicket National Preserve.

**SUMMARY:** Notice is hereby given, in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations, Part 9, Subpart B, of a Plan of Operations submitted by Buford Curtis, Inc., for reclamation of the Rafferty Fee Lease—Well No. 1 site, Hardin County, Texas.

**DATES:** The above document is available for public review and comment through July 11, 2008.

**ADDRESSES:** The Plan of Operations is available for public review and comment online at <http://parkplanning.nps.gov/bith>, and in the office of the Superintendent, Todd Brindle, Big Thicket National Preserve, 6044 FM 420, Kountze, Texas 77625, telephone: 409-951-6802.

**FOR FURTHER INFORMATION CONTACT:** Mr. Haigler “Dusty” Pate, Biologist, Oil and Gas Program Manager, Big Thicket National Preserve, 6044 FM 420, Kountze, Texas 77625, telephone: 409-951-6822, e-mail at [Haigler\\_Pate@nps.gov](mailto:Haigler_Pate@nps.gov).

**SUPPLEMENTARY INFORMATION:** If you wish to comment, you may submit your

comments by any one of several methods. You may mail comments to the Superintendent at the address above. You may also comment via the Internet at <http://parkplanning.nps.gov/bith>. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly using the information above. Finally, you may hand-deliver comments to the address above. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 2, 2008

**Todd W. Brindle,**

*Superintendent, Big Thicket National Preserve.*

[FR Doc. E8-12964 Filed 6-10-08; 8:45 am]

**BILLING CODE 4312-CB-M**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-607]

#### **In the Matter of Certain Semiconductor Devices, DMA Systems, and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge’s (“ALJ”) initial determination (“ID”) (Order No. 73) granting the joint motion to terminate the above-captioned investigation based on a settlement agreement.

**FOR FURTHER INFORMATION CONTACT:** Eric Frahm, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3107. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E

Street, SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted Inv. No. 337-TA-607 based on a complaint filed by Samsung Electronics Co., Ltd. of Seoul, Korea (“Samsung”) on May 7, 2007. 72 FR 32863 (June 14, 2007). The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor devices, DMA systems, and products containing same by reason of infringement of certain claims of U.S. Patent No. 5,613,162 and U.S. Patent No. 7,064,026. The notice of investigation named Renesas Technology Corp. of Tokyo, Japan and Renesas Technology America, Inc. of San Jose, California (collectively, “Renesas”) as respondents. The complaint, as amended, further alleged that an industry in the United States exists as required by subsection 337(a)(2).

On April 25, 2008, Samsung and Renesas jointly moved to terminate the investigation based on a settlement agreement. On April 29, 2008, the Commission investigative attorney filed a response supporting the motion.

On May 19, 2008, the ALJ issued the subject ID (Order No. 73) granting the joint motion to terminate the investigation based on a settlement agreement. The ALJ found that the joint motion complied with the requirements of Commission Rule 210.21(b) (19 CFR 210.21(b)). In addition, the ALJ concluded, pursuant to Commission Rule 210.50(b)(2) (19 CFR 210.50(b)(2)), that there is no evidence that termination of this investigation will prejudice the public interest. No petitions for review of this ID were filed.

The Commission has determined not to review the ID.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission’s Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: June 5, 2008,

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8-13047 Filed 6-10-08; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-456 and 731-TA-1151-1152 (Preliminary)]

### Citric Acid and Certain Citrate Salts From Canada And China; Determinations

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured<sup>2</sup> by reason of imports from Canada and China of citric acid and certain citrate salts, provided for in subheading 2918.14.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV) and subsidized by the Government of China.

### Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase

of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

### Background

On April 14, 2008, a petition was filed with the Commission and Commerce by Archer Daniels Midland Co., Decatur, IL; Cargill, Inc., Wayzata, MN; and Tate & Lyle Americas, Inc., Decatur, IL, alleging that an industry in the United States is materially injured or threatened with material injury by reason of imports of citric acid and certain citrate salts from Canada and China that are alleged to be sold in the United States at LTFV and subsidized by the Government of China. Accordingly, effective April 14, 2008, the Commission instituted antidumping and countervailing duty investigations Nos. 701-TA-456 and 731-TA-1151-1152 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 22, 2008 (73 FR 21650). The conference was held in Washington, DC, on May 7, 2008, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 29, 2008. The views of the Commission are contained in USITC Publication 4008 (June 2008), entitled *Citric Acid and Certain Citrate Salts from Canada and China: Investigation Nos. 701-TA-456 and 731-TA-1151-1152 (Preliminary)*.

By order of the Commission.

Issued: June 5, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8-13050 Filed 6-10-08; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1135 (Final)]

### Sodium Metal From France

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of the final phase of an antidumping investigation.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731-TA-1135 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from France of sodium metal, provided for in subheading 2805.11.00 of the Harmonized Tariff Schedule of the United States.<sup>1</sup>

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**EFFECTIVE DATE:** May 28, 2008.

### FOR FURTHER INFORMATION CONTACT:

Nathanael Comly (202-205-3174), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

### SUPPLEMENTARY INFORMATION:

**Background.**—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of sodium metal from France are being sold in the United States at less than fair value within the

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

<sup>2</sup> Chairman Daniel R. Pearson and Commissioners Charlotte R. Lane and Dean A. Pinkert determined that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Canada and China of citric acid and certain citrate salts.

<sup>1</sup> For purposes of this investigation, the Department of Commerce has defined the subject merchandise as "sodium metal (Na), in any form and at any purity level."

meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on October 23, 2007, by E.I. du Pont de Nemours & Co. Inc., Wilmington, DE.

**Participation in the investigation and public service list.**—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.**—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Staff report.**—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on September 19, 2008, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

**Hearing.**—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on October 14, 2008, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 2, 2008. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and

nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 7, 2008, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

**Written submissions.**—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is September 26, 2008. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 21, 2008; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before October 21, 2008. On November 6, 2008, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 7, 2008, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on

Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: June 5, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8-13046 Filed 6-10-08; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Inv. No. 731-TA-745 (Second Review)]

### Steel Concrete Reinforcing Bar From Turkey

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of a full five-year review concerning the antidumping duty order on steel concrete reinforcing bar from Turkey.

**SUMMARY:** The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on steel concrete reinforcing bar from Turkey would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** June 5, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Joshua Kaplan (202-205-3184), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

**Background.**—On May 6, 2008, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (73 FR 27847, May 14, 2008). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

**Participation in the review and public service list.**—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.**—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party

granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Staff report.**—The prehearing staff report in the review will be placed in the nonpublic record on September 25, 2008, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

**Hearing.**—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on October 16, 2008, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 8, 2008. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 14, 2008, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

**Written submissions.**—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is October 6, 2008. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is October 27, 2008; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before October 27, 2008. On November 21, 2008, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or

before November 25, 2008, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: June 6, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8-13049 Filed 6-10-08; 8:45 am]

BILLING CODE 7020-02-P

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**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[Notice (08-051)]

**NASA Advisory Council; Meeting**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National



Aeronautics and Space Administration announces a meeting of the NASA Advisory Council. The agenda for the meeting includes updates from each of the Council committees, including discussion and deliberation of potential recommendations. The Council committees address NASA interests in the following areas: Aeronautics, Audit and Finance, Space Exploration and Human Capital, Science, and Space Operations.

**DATES:** Thursday, July 10, 2008, 8 a.m. to 4 p.m.

**ADDRESSES:** Kingston Room, Radisson Hotel Cleveland Airport, 25070 Country Club Boulevard, North Olmsted, OH 44070.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul A. Iademarco, Designated Federal Official, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-1318.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: June 5, 2008.

**P. Diane Rausch,**

*Advisory Committee Management Officer,  
National Aeronautics and Space  
Administration.*

[FR Doc. E8-13094 Filed 6-10-08; 8:45 am]

**BILLING CODE 7510-13-P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95-541)

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by July 11, 2008. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy at the above address or (703) 292-7405.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

#### 1. Applicant

Permit Application No. 2009-009, Rennie S. Holt, U.S. AMLR Program, Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA 92038.

#### Activity for Which Permit Is Requested

Take and Import into the U.S.A. The applicant plans capture up to 30 adult female southern elephant seals which will be tagged, dye marked, blood sampled, weighed, morphometric measurements taken, muscle/blubber biopsy taken, and vibrissae collected. In addition up to 150 juvenile southern elephant seals will be captured to collect morphometric measurements, determine gender and tag. Up to 50 Leopard seals per year will have tissue plugs taken from their flippers using a disposable 2 mm biopsy punch. These samples will be used in DNA studies.

#### Location

ASPA 149—Cape Shirreff, Livingston Island (including San Telmo Islands), and Seal Island.

#### Dates

November 1, 2008 to April 30, 2011.

**Nadene G. Kennedy,**

*Permit Officer, Office of Polar Programs.*

[FR Doc. E8-13075 Filed 6-10-08; 8:45 am]

**BILLING CODE 7555-01-P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

**FOR FURTHER INFORMATION CONTACT:**

Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

**SUPPLEMENTARY INFORMATION:** On May 6, 2008, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on June 5, 2008, to: Sam Feola, Permit No. 2009-003. Sam Feola, Permit No. 2009-004.

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. E8-13033 Filed 6-10-08; 8:45 am]

**BILLING CODE 7555-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52-025 and 52-026]

### Southern Nuclear Operating Company; Acceptance for Docketing of an Application for Combined License for Vogtle Electric Generating Plant Units 3 and 4

By letter dated March 28, 2008, Southern Nuclear Operating Company (SNC), acting on behalf of itself and Georgia Power Company, Oglethorpe Power Corporation (an Electric Membership Corporation), Municipal Electric Authority of Georgia, and the City of Dalton, Georgia, an incorporated municipality in the State of Georgia acting by and through its Board of Water, Light and Sinking Fund Commissioners, submitted an application to the U.S. Nuclear Regulatory Commission (NRC) for a combined license (COL) for two AP1000 advanced passive pressurized water reactors in accordance with the requirements contained in 10 CFR 52, "Licenses, Certifications and Approvals for Nuclear Power Plants." These reactors will be identified as Vogtle Electric Generating Plant (VEGP) Units 3 and 4 and located on the existing VEGP site in Burke County, Georgia. A notice of receipt and availability of this

application was previously published in the **Federal Register** (73 FR 24616) on May 5, 2008.

The NRC staff has determined that SNC has submitted information in accordance with 10 CFR Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," and 10 CFR Part 52 that is acceptable for docketing. The docket numbers established for the VEGP Units 3 and 4 COL application are 52-025 and 52-026, respectively. This COL application is referencing an Early Site Permit (ESP) application (docket number 52-011) for the VEGP Units 3 and 4 site. The ESP application is currently being considered by the NRC.

The NRC staff will perform a detailed technical review of the application. Docketing of the application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application. The Commission will conduct a hearing in accordance with Subpart L, "Informal Hearing Procedures for NRC Adjudications," of 10 CFR Part 2 and will receive a report on the COL application from the Advisory Committee on Reactor Safeguards in accordance with 10 CFR 52.87, "Referral to the Advisory Committee on Reactor Safeguards (ACRS)." If the Commission finds that the COL application meets the applicable standards of the Atomic Energy Act and the Commission's regulations, and that required notifications to other agencies and bodies have been made, the Commission will issue a COL, in the form and containing conditions and limitations that the Commission finds appropriate and necessary.

In accordance with 10 CFR Part 51, the Commission will also prepare a supplemental environmental impact statement for the proposed action. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice.

Finally, the Commission will announce in a future **Federal Register** notice the opportunity to petition for leave to intervene in the hearing required for this application by 10 CFR 52.85.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, and will be accessible electronically through the

Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room link at the NRC Web site <http://www.nrc.gov/reading-rm/adams.html>. The application is also available at <http://www.nrc.gov/reactors/new-licensing/col.html>. Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland this 30th day of May 2008.

For the Nuclear Regulatory Commission.

**Manny Comar,**

*Lead Project Manager, AP1000 Projects Branch 1, Division of New Reactor Licensing, Office of New Reactors.*

[FR Doc. E8-13055 Filed 6-10-08; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket No[s] 52-022 and 52-023]

### **Progress Energy Carolinas, Inc.; Notice of Hearing and Opportunity To Petition for Leave To Intervene and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation on a Combined License for the Shearon Harris Units 2 and 3; Correction**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Correction.

**SUMMARY:** This document corrects a notice appearing in the **Federal Register** on June 4, 2008 (73 FR 31899), that gives notice that a hearing will be held that will consider the application dated February 18, 2008, filed by Progress Energy Carolinas, Inc., pursuant to Subpart C of 10 CFR Part 52, for a combined license. This action is necessary to correct an erroneous e-mail address.

**FOR FURTHER INFORMATION CONTACT:** Serita Sanders, Office of New Reactors, Nuclear Regulatory Commission, Telephone 301-415-2956, e-mail [Serita.Sanders@nrc.gov](mailto:Serita.Sanders@nrc.gov).

**SUPPLEMENTARY INFORMATION:** On page 31900, center column, the first complete paragraph, the e-mail address [JohnOneill@PillsburyLaw.com](mailto:JohnOneill@PillsburyLaw.com) is corrected to read [john.o'neill@pillsburylaw.com](mailto:john.o'neill@pillsburylaw.com).

Dated at Rockville, Maryland, this 5th day of June 2008.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. E8-13059 Filed 6-10-08; 8:45 am]

**BILLING CODE 7590-01-P**

## PRESIDIO TRUST

### Notice of Public Meeting

**AGENCY:** The Presidio Trust.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with § 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb note, Title I of Pub. L. 104-333, 110 Stat. 4097, as amended, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held commencing 6:30 p.m. on Monday, July 14, 2008, at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to receive public comment on the draft Supplemental Environmental Impact Statement for the Main Post, to provide an Executive Director's report, and to receive public comment on other matters in accordance with the Trust's Public Outreach Policy.

Individuals requiring special accommodation at this meeting, such as needing a sign language interpreter, should contact Mollie Matull at 415.561.5300 prior to July 7, 2008.

**Time:** The meeting will begin at 6:30 p.m. on Monday, July 14, 2008.

**ADDRESSES:** The meeting will be held at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco.

### FOR FURTHER INFORMATION CONTACT:

Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129-0052, Telephone: 415.561.5300.

Dated: June 5, 2008.

**Karen A. Cook,**

*General Counsel.*

[FR Doc. E8-13057 Filed 6-10-08; 8:45 am]

**BILLING CODE 4310-4R-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-8927, 34-57929; File No. 4-559]

### International Roundtable on Interactive Data for Public Financial Reporting

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of roundtable meeting; request for comment.

**SUMMARY:** On Tuesday, June 10, 2008, the Securities and Exchange Commission will hold a roundtable discussion on the experience in countries that have already adopted interactive data; the views of countries currently considering adopting interactive data; and the perspectives from analysts and users of financial information about how best to take advantage of the capabilities of interactive data. The event begins with remarks by SEC Chairman Christopher Cox on the use of interactive data by public companies and mutual funds to improve disclosure for individual investors. Following Chairman Cox's remarks, a panel discussion will consider the use of interactive data for public financial reporting. Panelists will include representatives from foreign securities regulators that already require interactive-data reporting as well as representatives from foreign securities regulators that are considering adopting a form of interactive-data disclosure. In addition, the panel will feature users of such disclosure and solicit their views on the use of interactive data for public financial reporting. The panel will be moderated by Chicago Sun-Times personal finance columnist Terry Savage.

The roundtable will take place at the Commission's headquarters at 100 F Street, NE., Auditorium, Room L-002, Washington, DC, from 9:30 a.m. to 12 p.m. The public is invited to observe the roundtable discussions. Seating is available on a first-come, first-serve basis. The roundtable discussions also will be available via webcast on the Commission's Web site at <http://www.sec.gov>. The Roundtable Agenda and other materials related to the Roundtable, including written statements submitted by participants for public distribution, will be accessible at <http://www.sec.gov/spotlight/xbrl/xbrl-meetings.shtml>.

**DATES:** Comments should be received on or before August 1, 2008.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number
- S7-11-08 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number S7-11-08. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** J. Troy Beatty, Senior Counsel, Office of International Affairs at (202) 551-6681.

**SUPPLEMENTARY INFORMATION:** The Roundtable follows the issuance on May 30, 2008 of a proposed rule on Interactive Data to Improve Financial Reporting. The proposed rule may be accessed on the Commission's Web site (<http://www.sec.gov/rules/proposed/2008/33-8924.pdf>). The Commission welcomes feedback regarding the proposed rule and any of the topics to be addressed at the Roundtable, including those raised in the questions below.

#### Questions for Panelists

- How did your interactive data program originate? Was it driven by investors, the regulator, or some other organization? What is the current status of your interactive data program?
- What is the scope of interactive filings required in your jurisdiction? If none, what filings are currently being considered that might be subject to an interactive data reporting requirement?
- What levels of detail of interactive data are you considering or have been the most effective in implementing? What issues arose in assessing the level of detail to be tagged in required filings?

In what manner were these issues resolved? Were the primary considerations in addressing these issues based on technological or regulatory developments?

- How did issuers in your jurisdiction respond, or how do you anticipate they will respond, to the requirement to provide reports using interactive data for financial reporting? Does your response differ depending on the size of the issuer or the level of detail required to be submitted?

- Did the use of interactive data in your jurisdiction impact what or how issuers report financial information? Does interactive data filing pose a burden to filers?

- What factors have most impacted the timing and ability of issuers to move to the use of interactive data for financial reporting in your jurisdiction?

- Do you find, or do you anticipate, that issuer filings in interactive data in your jurisdiction benefit, or will benefit, the investor and the larger investment community? What have been your experiences to date in realizing these benefits? In what ways are investors assessing and using interactive data? Are any alternatives for easier access for investors being considered to increase usage of the data?

- What regulatory filings would benefit investors by being subject to an interactive data filing requirement? Are there portions of existing filings that would benefit investors by being subject to an interactive data filing requirement?

- In your experience, what "works" in terms of designing and implementing interactive data regulatory requirements?

- Should interactive data filing tags be interoperable across national markets? If so, what efforts could be made to make data filing tags interoperable? Should regulatory authorities collaborate on or encourage this?

By the Commission.

June 5, 2008.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-13053 Filed 6-10-08; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57925; File No. SR-Amex-2008-36]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change Relating to the Listing and Trading of Shares of the MacroShares \$100 Oil Up Trust and the MacroShares \$100 Oil Down Trust

June 5, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 20, 2008, the American Stock Exchange LLC (“Amex” or “Exchange”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rules 1400, 1401, 1402 and 1405 relating to the trading of Paired Trust Shares and to list and trade shares of the MacroShares \$100 Oil Up Trust (“Up Trust”) and the MacroShares \$100 Oil Down Trust (“Down Trust”) (collectively, the “Trusts”) under those rules, as amended. The shares of the Up Trust are referred to as the Up MacroShares, the shares of the Down Trust are referred to as the Down MacroShares, and they are referred to collectively as the “Shares.” The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <http://www.amex.com>.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of

the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend Amex Rules 1400, 1401, 1402 and 1405 relating to the trading of Paired Trust Shares and to list and trade the Shares under those rules, as amended.<sup>3</sup> The Up MacroShares and the Down MacroShares will be offered by the Up Trust and the Down Trust, respectively. The Trusts were established by MACRO Securities Depositor, LLC, as depositor, under the laws of the State of New York. The Trusts are not registered with the Commission as investment companies.<sup>4</sup>

##### a. Amendment to Amex Rules 1400, 1401, 1402 and 1405

The Exchange proposes to amend Amex Rules 1400, 1401, 1402 and 1405, which apply to Paired Trust Shares, to accommodate the listing and trading of the Up MacroShares and the Down MacroShares. In their current form, these rules apply to Paired Trust Shares that consist of Holding Shares and Tradeable Shares.<sup>5</sup>

As described in more detail below, the structure of the series of Paired Trust Shares proposed to be listed and traded on the Exchange pursuant to this proposal varies from the structure contemplated under the current rules for Paired Trust Shares in that there is only one set of trusts instead of two. As a result of a recent interpretation by the staff of the Internal Revenue Service relating to the inability to interpose a grantor trust in order to utilize a certain

<sup>3</sup> The Commission approved the listing and trading of a similar product on the Exchange when it approved new Amex Rules 1400–1405. See Securities Exchange Act Release No. 54839 (November 29, 2006), 71 FR 70804 (December 6, 2006) (SR-Amex-2006-82) (approving the listing and trading of Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares). Amex Rules 1403 and 1404 would also be applicable to the Up MacroShares and Down MacroShares described herein, although the Exchange is not proposing to amend those rules.

<sup>4</sup> The Shares are being offered by the Trusts under the Securities Act of 1933, as amended. On April 17, 2008, the depositor filed with the Commission a Registration Statement on Form S-1 for both the Up MacroShares (File No. 333-150282-01) (“Up Trust Registration Statement”) and the Down MacroShares (File No. 333-150282-02) (“Down Trust Registration Statement”) and together with the Up Trust Registration Statement, the “Registration Statements”).

<sup>5</sup> Holding Shares are issued by a matched pair of trusts (“Holding Trusts”) in exchange for cash; Tradeable Shares are issued by a different pair of trusts (“Tradeable Trusts”) in exchange for the deposit of Holding Shares.

tax reporting form, the Exchange has been notified that the need for the current two-tier trust structure set forth in Amex Rule 1400 for Paired Trust Shares is no longer necessary.<sup>6</sup> The Exchange represents that there are no substantive differences between the proposed structure (a single set of Trading Trusts that issue Trading Shares and hold financial instruments) and the current two-tier structure (a set of Tradeable Trusts that issue Tradeable Shares and hold Holding Shares issued by a set of Holding Trusts that invest in financial instruments).<sup>7</sup>

Therefore, the Exchange proposes to amend Amex Rules 1400, 1401, 1402 and 1405 to provide for the listing and trading of Paired Trust Shares in the case of a series that has only one set of paired trusts. Under the proposed amendments to Amex Rule 1400, the term “Paired Trust Shares” refers to: (1) Both Holding Shares and any related Tradeable Shares; or (2) solely “Trading Shares,” which is a new defined term. As proposed, Trading Shares has the same definition as Holding Shares, except that it is not required that a majority of Trading Shares be acquired and deposited in a related Tradeable Trust, as it is with Holding Shares. The Exchange proposes conforming changes in Amex Rules 1401, 1402 and 1405.<sup>8</sup>

##### b. Description of the Shares and the Trusts

The Up Trust and the Down Trust would issue Up MacroShares and Down MacroShares, respectively, on a continuous basis at the direction of authorized participants, as described in more detail below.<sup>9</sup> The Up MacroShares and the Down MacroShares represent undivided beneficial interests in the Up Trust and the Down Trust, respectively.

The assets of each Trust will include an income distribution agreement and settlement contracts entered into with the other Trust. Under the income distribution agreement, as of any distribution date, each Trust will either: (1) Be required to pay all or a portion of its available income to the other Trust; or (2) be entitled to receive all or

<sup>6</sup> See email from William Love, Vice President and Associate General Counsel, Amex, to Christopher W. Chow and Ronesha Butler, Special Counsels, Commission, dated May 29, 2008 (“May 29 E-mail”).

<sup>7</sup> See id.

<sup>8</sup> In paragraph (b)(i) of Amex Rule 1402, the Exchange also proposes to correct an error that was inadvertently made when the rule was originally adopted by replacing the word “certificates” with the word “shares” (consistent with all other references to shares in the rules for Paired Trust Shares).

<sup>9</sup> See May 29 E-mail, *supra* note 6.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

a portion of the other Trust's available income, based, in each case, on the level of the Applicable Reference Price of Crude Oil (as defined below) for each day during the preceding calculation period. Under each settlement contract, in connection with the final scheduled termination date, an early termination date or any redemption date, each Trust will either be required to make a final payment out of its assets to the other Trust or be entitled to receive a final payment from the other Trust out of the assets of the other Trust, based, in each case, on the change in the level of the Applicable Reference Price of Crude Oil from its starting level on the closing date to its ending level on the relevant price determination day preceding the final scheduled termination date, early termination date, or redemption date, as the case may be. Each Trust will also hold U.S. Treasuries and repurchase agreements on U.S. Treasuries (collectively, "treasuries") to secure its obligations under the income distribution agreement and the settlement contracts.<sup>10</sup>

Each Trust will make quarterly distributions of income on the treasuries and a final distribution of all assets it holds on deposit on the final scheduled termination date, an early termination date or a redemption date.<sup>11</sup> Each quarterly and final distribution will be based on the value of the Applicable Reference Price of Crude Oil, which is defined as the settlement price of the New York Mercantile Exchange ("NYMEX") division light sweet crude oil futures contract of the designated maturity, as established and reported by the NYMEX on a per barrel basis in U.S. dollars at the end of each price determination day.<sup>12</sup> For this purpose, a price determination day refers to each day on which trading of the light sweet

crude oil futures contract of the designated maturity occurs by open outcry on the trading floor of NYMEX.<sup>13</sup> The Applicable Reference Price of Crude Oil is the reference value on the basis of which quarterly and final distributions on the Up MacroShares and Down MacroShares are calculated.

With respect to the Up Trust, if the level of the Applicable Reference Price of Crude Oil on any price determination day exceeds its starting level on the closing date (the date on which the Trusts entered into the income distribution agreement), the underlying value of the Up Trust will increase to include all of its assets plus a portion of the assets of the paired Down Trust. Conversely, if the level of the Applicable Reference Price of Crude Oil on any price determination day falls below its starting level, the Up Trust's underlying value will decrease because a portion of its assets will be included in the underlying value of the paired Down Trust. The underlying value of the Up Trust on each price determination day represents the aggregate amount of the assets in the paired Trusts to which the Up Trust would be entitled if the settlement contracts were settled on that day.

With respect to the Down Trust, if the level of the Applicable Reference Price of Crude Oil on any price determination day exceeds its starting level on the closing date, the underlying value of the Down Trust will decrease because a portion of its assets will be included in the underlying value of the paired Up Trust. Conversely, if the level of the Applicable Reference Price of Crude Oil on any price determination day falls below its starting level, the Down Trust's underlying value will increase to include all of its assets plus a portion of the assets of the paired Up Trust. The underlying value of the Down Trust on each price determination day represents the aggregate amount of the assets in the paired Trusts to which the Down Trust would be entitled if the settlement contracts were settled on that day.

The Up MacroShares and the Down MacroShares may be issued only in MacroShares Units, consisting of 50,000 Up MacroShares issued by the Up Trust and 50,000 Down MacroShares issued by the Down Trust. The Up Trust and Down Trust will issue their Shares on an ongoing basis at any time after the closing date only to persons who qualify as authorized participants at the per share underlying value of those shares

on the business day on which a creation order for the Shares is delivered to and accepted by MacroMarkets LLC, the administrative agent for both Trusts.<sup>14</sup> The Shares may then be sold by authorized participants to the public at the market price prevailing at the time of any such sale.

The Up MacroShares (Down MacroShares) may be redeemed on any business day together with Down MacroShares (Up MacroShares) by any holder who is an authorized participant only in MacroShares Units (as described above) at the respective per Share underlying values of those Shares, as measured on the date on which the applicable redemption order was placed. Unless earlier redeemed on a redemption date or an early termination date, a final distribution will be made on both the Up MacroShares and the Down MacroShares on the distribution date occurring in December of 2013.

The Registration Statements contain more information regarding the Shares, the Trusts, the Applicable Reference Price of Crude Oil, quarterly distributions, final distributions, underlying values, risks, fees and expenses, termination triggers, and creation and redemption procedures.

#### c. Availability of Information Regarding the Shares

*Intraday Indicative Values.* Throughout each price determination day, the Amex, acting as the calculation agent for each Trust, will calculate and disseminate, at least every 15 seconds during regular Amex trading hours, through the facilities of the Consolidated Tape Association ("CTA"), an estimated value (referred to as an "Intraday Indicative Value" or "IIV") for the underlying value per Share of both the Up MacroShares and the Down MacroShares. The purpose of this disclosure is to promote liquidity and intraday pricing transparency with respect to these estimated per Share underlying values, which can be used in connection with other related market information. To enable this calculation, the Amex will receive real time price data from the NYMEX through major market data vendors for the light sweet crude oil futures contract of the designated maturity that trades on the NYMEX.<sup>15</sup>

<sup>14</sup> Authorized participants must also pay a transaction fee of \$2,000 for any paired redemption or issuance. All of the shares created on the closing date will be sold to authorized participants at their underlying value plus a fee of \$0.10 per share, which will be applied to cover the formation costs of the Trusts.

<sup>15</sup> See May 29 E-mail, *supra* note 6.

<sup>10</sup> See *id.*

<sup>11</sup> Each Trust's quarterly distribution to holders of that Trust's Shares will be made out of the income that it holds on deposit after it has deducted an appropriate amount for fees, either made or received a payment under the income distribution agreement, and acquired treasuries with an aggregate purchase price equal to the aggregate par amount of the outstanding Shares of that Trust on that distribution date. On any distribution date, if a Trust's actual fees and expenses exceeds its income from the treasuries, there will be a corresponding reduction in the underlying value of the Trust that will be permanent unless it can be made up out of treasury income on future distribution dates, net of fees and expenses on those distribution dates.

Each Trust's final distribution to holders of that Trust's Shares will depend on the payments that it is required to make to, or that it is entitled to receive from, the other Trust under the settlement contracts that are settled in connection with the final scheduled termination date, early termination date, or redemption date, as the case may be.

<sup>12</sup> See *id.*

<sup>13</sup> If trading of the NYMEX division's light sweet crude oil futures contract ceases to occur by open outcry and is transferred by NYMEX to an electronic platform, a price determination day will be based upon trading on such electronic platform.

Because the NYMEX market for the light sweet crude oil futures contract will be closed for portions of the Amex trading day, the IIV calculated values will become fixed and will not be updated at such times that the NYMEX contract is not trading.<sup>16</sup> Conversely, at times when the light sweet crude oil futures contract of the designated maturity is trading on NYMEX, those trades will be used to update the IIV values.

The per-Share IIVs disseminated during Amex trading hours should not be viewed as real time updates of the underlying value of an Up MacroShare and a Down MacroShare, as these values are calculated only once a day. The Exchange believes, however, that dissemination of the IIVs provides additional information that is useful to professionals and investors in connection with the trading of the Shares on the Exchange or the creation or redemption of Shares.

The Amex will make available through its in-house systems, for use by the specialist and market makers, the IIV values distributed through the facilities of the CTA. This data will also be available to Amex surveillance systems and personnel for their purposes.

*Availability of Other Information and Data.* At the end of each price determination day, the Amex will also calculate the premium or discount of the midpoint of the bid/offer for the Up MacroShares at the close on the Amex relative to the underlying value per Share for that price determination day, after the latter is calculated and provided to the Amex by the trustee. The Amex will also perform the same calculation with respect to the Down MacroShares. The Amex will then post these premiums/discounts, together with the end-of-day price information for the Shares, on its Web site (<http://www.amex.com/amextrader>). Further, the Amex will post on its Web site any corrections made by NYMEX to the Applicable Reference Price of Crude Oil that was reported by NYMEX for any price determination day. The Amex also intends to disseminate a variety of data with respect to the Shares on a daily basis by means of CTA and CQ High Speed Lines, including quotation and last sale data information.

On each price determination day, State Street Bank and Trust Company, the trustee for the Up Trust and the

Down Trust, will calculate the underlying value of the Up Trust and the Down Trust and the per-Share underlying value of one Up MacroShare and one Down MacroShare, based on the Applicable Reference Price of Crude Oil established and reported by NYMEX. The trustee will then provide such values to the administrative agent, which will post them on its Web site (<http://www.macromarkets.com>). All investors and market participants will have access to the administrative agent's Web site at no charge.

Information regarding secondary market prices and volume of the Shares will be broadly available on a real-time basis throughout the trading day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers.

Delayed information on futures contracts is often publicly available from futures exchanges.<sup>17</sup> Daily settlement prices for the oil futures contract designated as the Applicable Reference Price of Crude Oil for the Shares is publicly available on NYMEX's Web site.<sup>18</sup>

#### d. Initial and Continued Listing Criteria

Amex Rule 1402 sets forth initial and continued listing criteria applicable to Paired Trust Shares. These criteria are currently applicable to Holding Shares and Tradeable Shares, and the proposed rule change would make them applicable to Trading Shares as well.

A minimum of 150,000 Up MacroShares and 150,000 Down MacroShares will be required to be outstanding at the commencement of trading. The Exchange believes that this minimum number of outstanding Shares at the start of trading is sufficient to provide adequate market liquidity, and it is the same initial minimum requirement that was applicable to the Claymore MACROshares Oil Up Tradeable Shares and the Claymore MACROshares Oil Down Tradeable Shares (the first series of Paired Trust Shares to be listed and traded on the Exchange). The starting level for the Applicable Reference Price of Crude Oil will be \$100 and is based on recent prices for a barrel of light sweet crude oil. The Exchange will obtain a representation on behalf of the Up Trust and the Down Trust that the underlying value per share of each Up Share and

Down Share, respectively, will be calculated daily and will be made available to all market participants at the same time. The Exchange will remove from listing the Up MacroShares or the Down MacroShares under the following circumstances, pursuant to proposed Amex Rule 1402:

- If following the initial twelve month period following the commencement of trading of the Shares: (1) The Up Trust or the Down Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Up MacroShares or Down MacroShares, respectively, for 30 or more consecutive trading days; (2) if the Up Trust or the Down Trust has fewer than 50,000 Up MacroShares or Down MacroShares, respectively, issued and outstanding; or (3) if the combined market value of all Shares issued and outstanding for the Up Trust and the Down Trust combined is less than \$1,000,000;

- If the intraday level of the Applicable Reference Price of Crude Oil is no longer calculated or available on at least a 15-second delayed basis during the time the Shares trade on the Amex from a source unaffiliated with the sponsor, custodian, depositor, Up Trading Trust, Down Trading Trust or the Exchange that is a major market data vendor;

- If the IIV of each Up Trading Share or Down Trading Share, as the case may be, is no longer made available on at least a 15-second delayed basis by a major market data vendor during the time the shares trade on the Exchange;

- If a replacement benchmark is selected for the determination of the Applicable Reference Price of Crude Oil, unless the Exchange files with the Commission a related proposed rule change pursuant to Rule 19b-4 under the Act seeking approval to continue trading the Up MacroShares or Down MacroShares and such rule change is approved by the Commission; or

- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

#### e. Trading Halts

Prior to the commencement of trading, the Exchange will issue an Information Circular (described below) to members informing them of, among other things, Exchange policies regarding halts in trading of the Shares. First, the Information Circular (described below) will advise that trading will be halted in the event the market volatility trading halt parameters set forth in Amex Rule 117 have been reached. In exercising its discretion to

<sup>16</sup> The IIV calculated during the period following the daily opening of trading of the Shares on the Amex but prior to any trades taking place on the NYMEX in the relevant light sweet crude oil futures contract will be based on the final price of the futures contract on the prior trading day.

<sup>17</sup> See e-mail from William Love, Vice President and Associate General Counsel, Amex, to Christopher W. Chow and Ronesha Butler, Special Counsels, Commission, dated May 30, 2008 ("May 30 E-mail").

<sup>18</sup> See *id.*

halt or suspend trading in the Shares, the Exchange may also consider other relevant factors and the existence of unusual conditions or circumstances that may be detrimental to the maintenance of a fair and orderly market. During any trading halt in the Shares, the underlying light sweet crude oil futures contracts are expected to continue to trade on the NYMEX because the NYMEX does not provide for trading halts in these contracts.

In the event that (a) The underlying value of each Trust or the per-Share underlying values of each of the Up Trading Shares or the Down Trading Shares are not disseminated daily to all market participants at the same time, (b) the IIV, updated at least every fifteen (15) seconds, for the underlying value per Share of the Up Trading Shares or the Down Trading Shares is no longer being calculated or disseminated by a major market data vendor during the time the Shares trade on the Amex, or (c) the price of the NYMEX light sweet crude oil futures contract is no longer available at least every 15 seconds from a major market data vendor during the time the Shares trade on the Amex<sup>19</sup> (e.g., due to a temporary disruption in connection with either the pricing of the light sweet crude oil futures contract on the NYMEX or the transmission of real time price data from the NYMEX), then the Exchange will halt trading.<sup>20</sup> However, in the case of (b) or (c) involving interruption to the required dissemination of IIVs or futures contract prices, the Exchange may consider relevant factors and exercise its discretion regarding the halt or suspension of trading during the day in which the interruption to the dissemination of the IIVs or the futures contract prices occurs. If the interruption to the dissemination of the IIVs or the futures contract prices persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

#### f. Trading Rules

The Shares are equity securities subject to Amex Rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities and account

opening and customer suitability (Amex Rule 411). The Shares will trade on the Amex from 9:30 a.m. until either 4 p.m. or 4:15 p.m. Eastern Time each business day for each series, as specified by the Exchange, and will trade in a minimum price variation of \$0.01 pursuant to Amex Rule 127–AEMI. Trading rules pertaining to odd-lot trading in Amex equities (Amex Rule 205–AEMI) will also apply.

Amex Rule 154–AEMI(c)(ii) provides that stop and stop limit orders to buy or sell a security the price of which is derivatively priced based upon another security or index of securities, may be elected by a quotation, as set forth in subparagraphs (c)(ii)(1)–(4) of Amex Rule 154–AEMI. By this rule filing, the Exchange is designating the Shares as eligible for this treatment.<sup>21</sup> In addition, Amex Rule 126A–AEMI complies with Rule 611 of Regulation NMS, which requires, among other things, that the Exchange adopt and enforce written policies and procedures that are reasonably designed to prevent trade-throughs of protected quotations. Members and member organizations will be subject to Commentary .03 to Amex Rule 1400 prohibiting such member or member organizations from entering into the Exchange's order routing system multiple limit orders as agent (i.e., customer agency orders).

#### g. Information Circular

Prior to the commencement of trading, the Exchange will inform its members and member organizations in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) What the Shares are; (2) the procedures for purchases and paired

optional redemptions of Shares, which may only be effected in MacroShares Units or multiples thereof by Authorized Participants (noting in particular that Shares are not individually redeemable); (3) prospectus delivery requirements that are applicable in connection with the purchase of newly issued Shares by investors; (4) applicable Amex rules; (5) dissemination of information regarding the underlying value of each Trust and the share of that underlying value allocable to one Up MacroShare and one Down MacroShare; (6) trading information; and (7) suitability obligations of members with respect to recommended transactions to customers in the Shares (see below).

In addition, the Information Circular will reference that the Shares are subject to various fees and expenses described in the Registration Statement on Form S-1 for the Up MacroShares or the Down MacroShares, as applicable.<sup>22</sup> The Information Circular will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. It will also reference the fact that the Commission has no jurisdiction over the trading of the NYMEX light sweet crude oil futures contract. Finally, the Information Circular will also advise members that the upside gains to investors are capped once the price level percentage change of the Applicable Reference Price of Crude Oil equals or exceeds 100%.

#### h. Suitability

The Exchange, in the Information Circular referenced above, will inform members and member organizations of the characteristics of the Trusts and the Shares and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

The Exchange notes that pursuant to Amex Rule 411, members and member organizations are required in connection with recommending transactions in the Shares to have a reasonable basis to believe that a customer is suitable for the particular investment given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member.

#### i. Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares and to deter and detect violations of Exchange rules and

<sup>19</sup> Trading in the MACRO Tradeable Shares will not be halted on the Amex, however, simply because price data from the NYMEX based on current trading is not available outside the normal open outcry trading hours of light sweet crude oil futures contracts on the NYMEX from 10 a.m. to 2:30 p.m., Eastern Time.

<sup>20</sup> In each of these circumstances, the Exchange may contact the Commission staff to discuss the matter.

<sup>21</sup> See Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) (SR–Amex–90–31) at note 9, regarding the Exchange's designation of equity derivative securities as eligible for such treatment by means of a new rule filing with the Commission. In the instant case, the price of the Up MacroShares and the Down MacroShares are derivatively based upon, and should fluctuate with, the value of the underlying settlement contracts held by the Up Trust or the Down Trust, as the case may be, which settlement contracts: (1) Determine the amount of the aggregate assets in the paired Trusts to which each respective Trust would be entitled if settlement occurred on that day; and (2) have a value that is determined by the level of the Applicable Reference Price of Crude Oil. Consequently, as with other equity derivative securities designated by the Exchange as eligible under the terms of Securities Exchange Act Release No. 29063 to allow stop and stop limit orders to be elected by a quotation, the Exchange believes that the derivative pricing relationship to which the Shares are subject does not present the type of opportunity for manipulation and trading abuses in connection with elections of stop orders by specialists that the Commission seeks to prohibit.

<sup>22</sup> See *supra* note 4.



applicable federal securities laws.<sup>23</sup> Specifically, the Amex will rely on its existing surveillance procedures applicable to derivative securities products, including Paired Trust Shares, to monitor trading in the Shares. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Exchange currently has in place a comprehensive surveillance sharing agreement with the NYMEX for the purpose of providing information in connection with trading in, or related to, futures contracts traded on the NYMEX that will serve as the Applicable Reference Price of Crude Oil. This agreement supports the surveillance responsibilities of the two exchanges, including monitoring for fraudulent and manipulative practices in the trading of the Shares. The Exchange also notes that NYMEX is a member of the Intermarket Surveillance Group ("ISG") and a signatory to the existing ISG Agreement, as is the Amex. Pursuant to the ISG Agreement, NYMEX has the obligation to provide relevant surveillance information in response to a request from Amex.<sup>24</sup>

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>25</sup> that a national securities exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule amendments will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in the proposed rules are intended to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. By order approve such proposed rule change, or
- B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2008-36 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-Amex-2008-36. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2008-36 and should be submitted on or before June 26, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

[FR Doc. E8-13030 Filed 6-10-08; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57916; File No. SR-Amex-2008-14]

### **Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change, and Amendment No. 1 Thereto, To Amend Rule 903C To Permit the Listing and Trading of Additional Index Options Series**

June 4, 2008.

#### **I. Introduction**

On February 20, 2008, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Rule 903C to permit the listing and trading of additional index options

<sup>23</sup> See May 30 E-mail *supra* note 17.

<sup>24</sup> See *id.*

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

series that do not meet current requirements. On April 24, 2008, Amex submitted Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on May 1, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

## II. Description of the Proposal

The Exchange proposes to add new Commentary .06 to Rule 903C to permit the listing and trading of additional index options series that do not meet current Rule 903C requirements if such options series are listed on at least one other national securities exchange in accordance with the applicable rules of such exchange for the listing and trading of index options. For each additional options series listed by the Exchange pursuant to proposed Commentary .06, the Exchange would submit a proposed rule change with the Commission that is effective upon filing within the meaning of Section 19(b)(3)(A) of the Act.

Rule 903C provides the mechanism for the Exchange to list or open options expiration month series on particular index options classes approved for listing and trading on the Exchange. Currently, up to six expiration month series may be listed at any one time. Amex Rule 903C(a) permits the Exchange to open options expiration month series on approved index options classes as follows: (i) Consecutive Month Series; (ii) Cycle Month Series; (iii) Long-Term Options Series; (iv) Short-Term (1 week) Options Series; and (v) Quarterly Options Series. This proposal seeks to permit the Exchange to list additional index options expiration month series if another options exchange does so, regardless of whether the additional series listing complies with the requirements of Rule 903C.

Consistent with this proposal, the index options class must either be specifically reviewed and approved by the Commission under Section 19(b)(2) of the Act and rules thereunder, or comply with Commentary .02 or .03 to Rule 901C, for the Exchange to be able to list the additional series.

## III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

exchange.<sup>4</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>5</sup> which requires that an exchange have rules designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that in order for Amex to list any additional expiration month series of an index option class pursuant to new Commentary .06 to Rule 903C, such series must: (1) Be already listed on another options exchange; (2) belong to an index options class that has been specifically reviewed and approved by the Commission under Section 19(b)(2) of the Act or that complies with Commentary .02 or .03 to Rule 901C; and (3) Amex must submit a proposed rule change with the Commission that is effective upon filing within the meaning of Section 19(b)(3)(A) of the Act.<sup>6</sup> In addition, the Commission notes that the proposal would allow Amex the ability to quickly list and trade additional expiration month series of an index options class based on the listing of the series by another options exchange.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-Amex-2008-14), as modified by Amendment No. 1, is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-13038 Filed 6-10-08; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> Commentary .02 (Broad Stock Index Groups) and Commentary .03 (Stock Index Industry Groups) of Rule 901C provide the requirements that must be met before those specific options groups may be traded on the Exchange pursuant to Rule 19b-4(e) under the Act.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57918; File No. SR-Amex-2008-42]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Equity Linked Term Notes

June 4, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 16, 2008, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves it on an accelerated basis.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise Section 107B of the Amex Company Guide ("Company Guide") to clarify that Rule 19b-4(e) under the Act<sup>3</sup> applies to the listing of equity-linked term notes ("ELNs")<sup>4</sup> that meet the generic listing criteria of Section 107B. The text of the proposed rule change is available at Amex's principal office, the Commission's Public Reference Room, and <http://www.amex.com>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(e).

<sup>4</sup> ELNs are the non-convertible debt of an issuer, whose value is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock.

<sup>3</sup> See Securities Exchange Act Release No. 57707 (April 24, 2008), 73 FR 24098 ("Notice").

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Section 107B of the Amex Company Guide details the Exchange's listing criteria for ELNs. The original listing criteria for Section 107B were approved in 1990 and amended to reflect specific standards for ELNs<sup>5</sup> prior to the adoption of Rule 19b-4(e) under the Act.<sup>6</sup> The listing criteria allowed Amex to list ELNs that met the standards set forth in Section 107B of the Company Guide. In this manner, the Exchange was able to list ELNs linked to a basket of up to 30 securities, as long as specified standards were met.<sup>7</sup>

Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4,<sup>8</sup> if the Commission has approved, pursuant to Section 19(b) of the Act,<sup>9</sup> the self-regulatory organization's trading rules, procedures, and listing criteria for the product class that would include the new derivative securities product, and the self-regulatory organization has a surveillance program for the product class.

The Exchange proposes to revise Section 107B of the Company Guide, which sets forth Amex's listing criteria for ELNs, to clarify that the listing and trading of ELNs on Amex is subject to Rule 19b-4(e) under the Act. Section 107B of the Company Guide would provide that income instruments which are linked, in whole or in part, to the

market performance of up to 30 common stocks or non-convertible preferred stocks will be considered for listing, pursuant to Rule 19b-4(e) under the Act, as long as the applicable conditions set forth in Section 107B are met. Thus, within five business days after commencement of trading of an ELN in reliance on Section 107B, the Exchange would file a Form 19b-4(e) with the Commission.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange submits that the proposal meets the forgoing objectives by clarifying the application of Rule 19b-4(e) under the Act to Section 107B of the Company Guide and providing notice to the Commission of new products listed under Section 107B.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Amex does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2008-42 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2008-42. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2008-42 and should be submitted on or before July 2, 2008.

**III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change**

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>13</sup>—which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and

<sup>5</sup> See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (SR-Amex-89-29) (approving listing standards to accommodate new securities not readily categorized under Amex's traditional listing guidelines for common and preferred stocks, bonds, debentures, and warrants); Securities Exchange Act Release No. 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (SR-Amex-92-42) (approving rules for the listing and trading of ELNs based on a single security).

<sup>6</sup> See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (New Products Release adopting Rule 19b-4(e)).

<sup>7</sup> See Securities Exchange Act Release No. 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (SR-Amex-99-42) (approving listing standards for ELNs based on a basket of up to 20 equity securities); Securities Exchange Act Release No. 47055 (December 19, 2002), 67 FR 79669 (December 30, 2002) (SR-Amex-2002-110) (amending the standards to allow for the listing of ELNs based on a basket of up to 30 equity securities). Clarified in an e-mail from Jeffrey Burns, Vice President and Associate General Counsel, Amex, to Mitra Mehr, Special Counsel, Division of Trading and Markets, Commission, dated June 2, 2008.

<sup>8</sup> 17 CFR 240.19b-4(c)(1).

<sup>9</sup> 15 U.S.C. 78s(b).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general, to protect investors and the public interest—because it seeks to clarify that the Exchange's listing and trading of ELNs is subject to Rule 19b-4(e) under the Act.

The Commission finds good cause for approving this proposal before the 30th day after the publication of notice thereof in the **Federal Register**. The Commission notes that it has recently approved similar proposals of other exchanges,<sup>14</sup> and Amex's proposal does not raise any novel regulatory issues.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-Amex-2008-42) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

[FR Doc. E8-13039 Filed 6-10-08; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57913; File No. SR-CBOE-2008-31]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change to List and Trade CBOE S&P 500 Three-Month Realized Variance Options and CBOE S&P 500 Three-Month Realized Volatility Options

June 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 23, 2008, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain of its rules, including Rules 5.5, 24.1, and 24.9, to provide for the listing and trading of options that overlie two statistical measurements of market variability: Realized variance and realized volatility of the S&P 500 Composite Stock Price Index ("S&P 500 Index"). CBOE S&P 500 Three-Month Realized Variance options and CBOE S&P 500 Three-Month Realized Volatility options would be cash-settled and have European-style exercise. The text of the rule proposal and proposed contract specifications for CBOE S&P 500 Three-Month Realized Variance options are available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled options having European-style exercise on two statistical measurements of market variability: Realized variance and realized volatility of the S&P 500 Index. These statistical measurements are attributes of and based on a broad-based security index (*i.e.*, S&P 500 Index). Three-month realized variance is a measure of the historical variability of the S&P 500 Index, based on actual prices that have been reported, or "realized," historically looking back over a three-month period. The

calculation uses daily returns for the three-month period relative to an average (mean) daily price return of zero. Three-month realized volatility is the square root of three-month realized variance. The Exchange also proposes to make technical changes to some of the rules that would be amended in order to list and trade realized variance and realized volatility options.

Currently, the Exchange lists and trades options on the 30-day implied volatility of the S&P 500 Index (CBOE Volatility Index ("VIX") options).<sup>3</sup> With the introduction of realized variance and realized volatility options, market participants would be able to trade options that settle to the actual or realized volatility of the S&P 500 Index that has accrued over a three-month time period. Different from VIX options, realized variance and realized volatility options would allow market participants to take a position on what they anticipate the actual volatility of the S&P 500 Index would be at expiration. In addition, the Exchange also notes that realized variance contracts are a popular and successful product in the over-the-counter ("OTC") market. By providing a listed and standardized market for realized variance and realized volatility options, the Exchange seeks to attract investors who desire to trade options on realized variance and realized volatility but at the same time prefer the certainty and safeguards of a regulated and standardized marketplace.

##### Calculation of Realized Variance and Realized Volatility

The formula for three-month realized variance and three-month realized volatility uses continuously compounded daily returns for a three-month period assuming a mean daily price return of zero. The calculated realized variance is then annualized assuming 252 business days per year.<sup>4</sup> The exercise-settlement value for CBOE S&P 500 Three-Month Realized Variance options is 10,000 times the three-month realized variance of the S&P 500 Index, and the exercise-settlement value for CBOE S&P 500 Three-Month Realized Volatility options is 100 times the three-month realized volatility of the S&P 500 Index, both of which are calculated using the following standardized formula: **REALIZED VARIANCE AND REALIZED VOLATILITY FORMULAS:**

measures implied volatility, but the Exchange currently does not list VXV options.

<sup>4</sup> The annualization factor for realized volatility is the square root of 252.

<sup>14</sup> See, e.g., Chicago Board Options Exchange Rule 31.5; Securities Exchange Act Release No. 57758 (May 1, 2008), 73 FR 25814 (May 7, 2008) (SR-CBOE-2008-44).

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Exchange also calculates the CBOE S&P 500 Three-Month Volatility Index ("VXV"), which

$$\text{Realized Variance} = 252 \times \left( \sum_{i=1}^{N_e-1} R_i^2 / (N_e - 1) \right)$$

$$\text{Realized Volatility} = \sqrt{\text{Realized Variance}} = \sqrt{252 \times \left( \sum_{i=1}^{N_e-1} R_i^2 / (N_e - 1) \right)}$$

Where:

$R_i = \ln(P_{i+1}/P_i)$ —Daily return of the S&P 500 Index from  $P_i$  to  $P_{i+1}$ .

$P_{i+1}$  = The final value of the S&P 500 Index used to calculate the daily return.

$P_i$  = The initial value of the S&P 500 Index used to calculate the daily return.

$N_e$  = Number of expected S&P 500 Index values needed to calculate daily returns during the three-month period. The total number of daily returns expected during the three-month period is  $N_e - 1$ .

$N_a$  = The actual number of S&P 500 Index values used to calculate daily returns during the three-month period. Generally, the actual number of S&P 500 Index values will equal the expected number of S&P 500 Index values (represented by  $N_e$ ). However, if one or more “market disruption events” occurs during the three-month period, the actual number of S&P 500 Index values will be less than the expected number of S&P 500 Index values by an amount equal to the number of market disruption events that occurred during the three-month period. The total number of actual daily returns during the three-month period is  $N_a - 1$ .

For purposes of calculating the respective exercise-settlement value to which the options would settle, realized variance and realized volatility are calculated from a series of values of the S&P 500 Index beginning with the Special Opening Quotation (“SOQ”) of the S&P 500 Index on the first day of the three-month period, and ending with the S&P 500 Index SOQ on the last day of the three-month period.<sup>5</sup> All other values in the series are closing values of the S&P 500 Index.

For example, the final exercise-settlement value to which a CBOE S&P 500 Three-Month Realized Variance option contract expiring on Friday, September 19, 2008 would settle would be calculated using the S&P 500 Index SOQ on Friday, June 20, 2008, the closing prices of the S&P 500 Index from Monday, June 23, 2008 through Thursday, September 18, 2008 and the

S&P 500 Index SOQ on Friday, September 19, 2008.

As described above, three-month realized variance and three-month realized volatility would be calculated using actual daily values of the S&P 500 Index, which is a broad-based security index. By extension, products based on statistical measurements that are derived from S&P 500 Index values should similarly be treated as products based directly on S&P 500 Index values. For purposes of CBOE’s rules, the indicative values for three-month realized variance and three-month realized volatility shall be treated as indexes.

Currently, CBOE calculates indicative values for implied and realized variance, and publishes those values daily after the close of trading. The CBOE S&P 500 Implied Variance indicator (“IUG”) is a measure of the market’s expectation of future variance of the S&P 500 Index that is implied by the daily settlement price of the front-month CBOE S&P 500 Three-Month Variance futures contract.<sup>6</sup> The CBOE S&P 500 Realized Variance indicator (“RUG”) is a measure of the realized variance of the S&P 500 Index from the beginning of the three-month period to the current date. IUG and RUG are disseminated through the Options Price Reporting Authority (“OPRA”) and are publicly available through most price quote vendors.<sup>7</sup>

#### Options Trading

The exercise-settlement value for CBOE S&P 500 Three-Month Realized Variance options would be 10,000 times the three-month realized variance of the S&P 500 Index. Realized variance would be quoted in variance points and fractions and one point would equal \$50. The minimum tick size for all series would be 0.10 point (\$5.00) and the minimum strike price interval would be \$5.00.<sup>8</sup>

The exercise-settlement value for CBOE S&P 500 Three-Month Realized Volatility options would be 100 times the three-month realized volatility of the S&P 500 Index. Realized volatility would be quoted in volatility points and fractions and one point would equal \$100. The minimum tick size for series trading below 3.00 would be 0.05 point (\$5.00) and the minimum tick for series trading at and above 3.00 would be 0.10 point (\$10.00). The minimum strike price interval would be \$1.00.

The Exchange proposes to list series at \$1 or greater strike price intervals on CBOE S&P 500 Three-Month Realized Volatility options. The Exchange believes that \$1 strike price intervals would provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives. CBOE believes that traders would likely use the related CBOE S&P 500 Three-Month Variance futures contract price as a proxy for the “current index level.” This is because the futures contract price reflects: (i) The realized variance of the S&P 500 Index experienced to date; and (ii) the market’s expectation of the future variance of the S&P 500 Index at expiration of the respective contract. CBOE believes that using futures prices is an accurate and transparent method for determining the “current index level” used to center the range in which \$1 or greater strikes in CBOE S&P 500 Three-Month Realized Volatility options would be listed.<sup>9</sup>

Initially, the Exchange would list at least two strike prices above and two strike prices below the square root of the related CBOE S&P 500 Three-Month Variance futures contract price at or about the time a series is opened for trading on the Exchange. As part of this

<sup>5</sup> The SOQ is calculated per normal index calculation procedures and uses the opening (first) reported sales price in the primary market of each component stock in the index on the last business day (usually a Friday) before the expiration date. If a stock in the index does not open on the day on which the exercise-settlement value is determined, the last reported sales price in the primary market is used to calculate the exercise-settlement value.

<sup>6</sup> CBOE Futures Exchange, LLC (“CFE”) currently lists CBOE S&P 500 Three-Month Realized Variance future contracts, which commenced trading on May 18, 2004.

<sup>7</sup> These values can be accessed by typing in the ticker symbol (IUG or RUG) at the following Web page: <http://cfe.cboe.com/DelayedQuote/SSFQuote.aspx>.

<sup>8</sup> See Rules 5.5 and 24.9.

<sup>9</sup> The Commission has approved the listing of options and LEAPS in \$1 strike intervals, and the use of futures prices in setting those strike intervals, for all other implied volatility products approved for listing and trading on the Exchange. See Rule 24.9.01(e)(ii). See also Securities Exchange Act Release Nos. 54192 (July 21, 2006), 71 FR 43251 (July 31, 2006) (SR-CBOE-2006-27) (\$1 strikes for VIX options); 55425 (March 8, 2007), 72 FR 12238 (March 15, 2007) (SR-CBOE-2006-73) (\$1 strikes for RVX options); 56813 (November 19, 2007), 72 FR 66211 (November 27, 2007) (SR-CBOE-2007-52) (\$1 strikes for VXD and VXN options and \$1 strikes for RVX, VIX, VXD and VXN LEAPS).

initial listing, the Exchange would list strike prices that are within 5 points from the square root of the related CBOE S&P 500 Three-Month Variance futures contract price on the preceding day.

As for additional series, the Exchange would be permitted to add additional series when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the square root of the related CBOE S&P 500 Three-Month Variance futures contract price moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices shall be within thirty percent (30%) above or below the square root of the related CBOE S&P 500 Three-Month Variance futures contract price. The Exchange would also be permitted to open additional strike prices that are more than 30% above or below the square root of the related CBOE S&P 500 Three-Month Variance futures contract price, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-makers trading for their own account would not be considered when determining customer interest. In addition to the initial listed series, the Exchange proposes to list up to sixty (60) additional series per expiration month for each series in CBOE S&P 500 Three-Month Realized Volatility options. Further, LEAPS on CBOE S&P 500 Three-Month Realized Volatility options would not be listed at intervals less than \$1.

The Exchange also proposes to set forth a delisting policy with respect to CBOE S&P 500 Three-Month Realized Volatility options. Specifically, the Exchange would, on a monthly basis, review series that are outside a range of five (5) strikes above and five (5) strikes below the square root of the related CBOE S&P 500 Three-Month Variance futures contract price and delist series with no open interest in both the put and the call series having a: (i) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Notwithstanding the proposed delisting policy, customer requests to add strikes and/or maintain strikes in CBOE S&P 500 Three-Month Realized Volatility option series eligible for delisting shall be granted.

The Exchange also proposes to add new Interpretation and Policy .11 to

Rule 5.5, Series of Option Contracts Open for Trading, which would be an internal cross reference stating that the intervals between strike prices for CBOE S&P 500 Three-Month Realized Volatility options series would be determined in accordance with proposed new Interpretation and Policy .01(g) to Rule 24.9.

#### Exercise and Settlement

The proposed options would expire on the Saturday following the third Friday of the expiring month. Trading in the expiring contract month would normally cease at 3:15 p.m. Chicago time on the business day preceding the last day of trading (ordinarily the Thursday before expiration Saturday, unless there is an intervening holiday). When the last trading day is moved because of an Exchange holiday (such as when CBOE is closed on the Friday before expiration), the last trading day for expiring options would be Thursday. As described above, the exercise-settlement value would be calculated from a series of values of the S&P 500 Index beginning with the SOQ of the S&P 500 Index on the first day of the three-month period, and ending with the S&P 500 Index SOQ on the last day of the three-month period. All other values in the series are closing values of the S&P 500 Index.

The exercise-settlement amount is equal to the difference between the exercise-settlement value and the exercise price of the option multiplied by \$50 for CBOE S&P 500 Three-Month Realized Variance options and multiplied by \$100 for CBOE S&P 500 Three-Month Realized Volatility options.

#### Surveillance

The Exchange would use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in CBOE S&P 500 Three-Month Realized Variance options and CBOE S&P 500 Three-Month Realized Volatility options. The Exchange represents that these surveillance procedures are adequate to monitor trading in options on these option products. For surveillance purposes, the Exchange would have complete access to information regarding trading activity in the pertinent underlying securities (*i.e.*, S&P 500 Index component securities).

#### Position Limits

The Exchange is not proposing to establish any position limits for CBOE S&P 500 Three-Month Realized Variance options and CBOE S&P 500 Three-Month Realized Volatility

options. Because realized variance and realized volatility are calculated using values of the S&P 500 Index, the Exchange believes that the position and exercise limits for these new products should be the same as those for broad-based index options (*e.g.*, SPX, for which there are no position limits). CBOE S&P 500 Three-Month Realized Variance options and CBOE S&P 500 Three-Month Realized Volatility options would be subject to the same reporting and other requirements triggered for other options dealt in on the Exchange.<sup>10</sup>

#### Exchange Rules Applicable

As stated above, for purposes of CBOE's rules, the indicative values for three-month realized variance and three-month realized volatility shall be treated as indexes. Except as modified by this proposal, the rules in Chapters I through XIX, XXIV, XXIVA, and XXIVB would equally apply to CBOE S&P 500 Three-Month Realized Variance options and CBOE S&P 500 Three-Month Realized Volatility options.

CBOE S&P 500 Three-Month Realized Variance options and CBOE S&P 500 Three-Month Realized Volatility options would be margined as "broad-based index" options, and under CBOE rules, especially, Rule 12.3(c)(5)(A), the margin requirement for a short put or call shall be 100% of the current market value of the contract plus up to 15% of the respective underlying indicative value. Additional margin may be required pursuant to Exchange Rule 12.10.

The Exchange proposes that CBOE S&P 500 Three-Month Realized Variance options and CBOE S&P 500 Three-Month Realized Volatility options be eligible for trading as Flexible Exchange Options as provided for in Chapters XXIVA (Flexible Exchange Options) and XXIVB (FLEX Hybrid Trading System).

#### Capacity

CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing of new series that would result from the introduction of CBOE S&P 500 Three-Month Realized Variance options and CBOE S&P 500 Three-Month Realized Volatility options.

<sup>10</sup> See Rule 4.13, *Reports Related to Position Limits*.

## Technical Changes

The Exchange proposes to make technical changes to Rules 24.4.03, 24.4.04, and 24.5, Exercise Limits by adding "VIX, VXN and VXD" to the rule text.<sup>11</sup> The Exchange proposes to make technical changes to Rules 24A.7(b), 24A.8(a), 24B.7(b), and 24B.8(a), by adding the parenthetical phrase, "including reduced-value option contracts" to the rule text. These FLEX rules already contemplate reduced-value option contracts, and the proposed changes are consistent with the treatment of non-FLEX reduced-value option contracts.<sup>12</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>13</sup> of the Act in general and furthers the objectives of Section 6(b)(5)<sup>14</sup> in particular in that it would permit trading in options based on the index pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby would provide investors with the ability to invest in options that provide statistical measurements of market variability.

### B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to

90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-CBOE-2008-31 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-CBOE-2008-31. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that

you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2008-31 and should be submitted on or before July 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-13019 Filed 6-10-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57927; File No. SR-NYSEArca-2008-54]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rules 6.62 and 6.91 Describing Complex Orders, Complex Order Priority, and Complex Order Execution

June 5, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 23, 2008, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On June 5, 2008, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Rules 6.62 and 6.91 describing Complex Orders, Complex Order Priority, and Complex Order Execution. The text of the proposed rule change is available at the principal office of NYSE Arca, at the Commission's Public Reference Room, and at <http://www.nyse.com>.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 updates cross references to recently renumbered rules.

<sup>11</sup> The Exchange inadvertently neglected to request the Commission's approval to add "VIX, VXN and VXD" to the respective rule text when the position limits for these products were eliminated. See Securities Exchange Act Release No. 54019 (June 20, 2006), 71 FR 36569 (June 27, 2006) (SR-CBOE-2006-55).

<sup>12</sup> See Securities Exchange Act Release No. 56350 (September 4, 2007), 72 FR 51878 (September 11, 2007) (SR-CBOE-2007-79).

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).



concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

For many years, the options exchanges have recognized that strategies involving more than one option series or more than one instrument associated with an underlying security are different from regular buy and sell orders for a single series, and orders to achieve such strategies should be defined separately. As the sophistication of the industry has grown, so have the strategies, and the options exchanges have regularly added new strategies to the list of defined complex order types. The investing industry, however, creates new, legitimate investment strategies that do not necessarily fit into one of the narrow definitions for complex order types that the exchanges presently use. These order types are often developed for a particular strategy, specific to a particular issue. The Exchange believes that to attempt to define every individual strategy imaginable, and file additional rules to memorialize them, would be a time consuming and onerous process, and would serve only to confuse the investing public. As a result, bona fide transactions to limit risk are not afforded the facility of execution afforded more common complex orders.

For instance, the Chicago Board Options Exchange ("CBOE")<sup>4</sup> and the International Securities Exchange ("ISE")<sup>5</sup> each define at least nine specific complex strategies. These are the most comprehensive lists of complex strategies defined in a rule set, yet they do not cover all of the possibilities of complex orders which are routinely presented for execution on the trading floor. Some strategies that do not fit the predefined structures are: (i) Long in the money call, long two in the money put, long out of the money call; (ii) long in the money call, short at the money call, long out of the money call; and (iii) long one in the money put,

short three at the money puts, long two out of the money puts. Each of these represents a legitimate investment strategy to limit risk or unwind an already established position in a portfolio.

To provide for greater flexibility in the design and use of complex strategies, NYSE Arca proposes to eliminate specific complex order types described in Rule 6.62, and adopt a generic definition approved for use for exemption from Trade Through Liability by the Options Linkage Authority as described in the *Plan For The Purpose Of Creating And Operating An Intermarket Option Linkage* ("Linkage Plan"). The Exchange believes this will give investors greater flexibility in creating strategies that may be processed electronically with greater accuracy and less intermediation than the present manual methods.

Proposed Rule 6.91 describes the entry of Complex Orders in the Consolidated Book and the operation of a Complex Matching Engine. The Complex Matching Engine is the mechanism in which Complex Orders are executed against each other or against individual quotes and orders in the Consolidated Book. Complex Orders in the Consolidated Book will be available to all market participants via an electronic interface. NYSE Arca proposes that Complex Orders be ranked in the Consolidated Book in strict price time based on the strategy and the total or net debit or credit.

Complex Orders eligible for execution in the Complex Matching Engine are defined to be consistent with the Linkage Plan Trade Through exemption. Therefore execution prices for the individual legs of a Complex Trade that are outside of the National Best Bid or Offer may be reported. The Complex Matching Engine will never, however, execute any of the legs of a Complex Trade at a price outside of the NYSE Arca best bid or offer ("NYSE BBO") for that leg.

NYSE Arca also proposes that Complex Orders attempt to execute against other Complex Orders in the Consolidated Book before attempting to execute against the individual leg markets in the Consolidated Book, provided that for purposes of priority, where the total or net debit or credit derived from the individual leg market is better than or equal to the price of the Complex Order, the individual leg markets will maintain priority. NYSE Arca notes that the various options exchange rule sets recognize that investors wishing to complete a complex strategy should not be encumbered by orders for a single leg.

To illustrate how the proposal would work, suppose, for instance, the markets for two call series is as follows:

XYZ July 30	2.20–2.40	10 × 10
XYZ July 35	1.10–1.25	10 × 10

A Complex Order is entered to Buy 10 July 30/Sell 10 July 35 for a Net Debit of 1.30. The Complex Matching Engine checks the Consolidated Book and finds there are no Complex Orders willing to sell the strategy, so it executes against the leg markets at prices of 2.40 for the July 30 calls and 1.10 for the July 35 calls.

With the same leg markets available, another Complex Order is sent to NYSE Arca to Buy 10 July 30/Sell 10 July 35 for a Net Debit of 1.00. Since the screen market is .95–1.30, the order would not execute but route to the Consolidated Book and post with a debit of 1.00. This would be disseminated to all NYSE Arca market participants. An order to Sell July 30/Buy July 35 for a credit of 1.00 arrives. It is routed directly to the Complex Matching Engine, where it is matched against the posted order, and priced at the first available prices found in the Complex Matching Engine, which, under this scenario, are 2.20 and 1.20.

The Exchange proposes, however, that if the individual leg markets are pricing the strategy at the same price as the posted Complex Order, an order sent to be executed against the posted order will instead execute against the individual orders and quotes in the leg markets. For instance, suppose that before the second order described above arrives, the markets in the options change as follows:

XYZ July 30	2.20–2.40	10 × 10
XYZ July 35	1.10–1.20	10 × 10

The individual leg markets are now pricing the strategy at the same price as the posted Complex Order. Even though the Complex Order net debit has been disseminated and advertised, the individual leg markets will maintain priority over the posted Complex Order. The Complex Matching Engine will execute the order with a credit of 1.00 against the 1.00 debit price of the leg markets, and then any residual will be matched against the Complex Order in the Consolidated Book at the same 1.00 debit.

Complex Orders that are not executable are entered into the Consolidated Book. The Complex Matching Engine will monitor the markets in the individual legs of Complex Orders in the Consolidated Book. If the market prices in the legs move so that the Complex Order is now executable in full (or in a permissible ratio), the Complex Order will be

<sup>4</sup> See CBOE Rule 6.53C.

<sup>5</sup> See ISE Rule 722.

executed against the individual orders and quotes in the leg markets.

The Exchange proposes that Lead Market Makers ("LMM") not be afforded any guaranteed allocation either in the execution of a complex strategy nor, if present, at the NYSE Arca BBO when a Complex Order executes against the individual leg markets. There is no obligation for LMMs (or any Market Maker) to quote prices for complex strategies; therefore there is no need for a guaranteed allocation. A market participant that establishes a price for a strategy should be rewarded for setting that price by being granted strict time priority. Similarly, the LMM quotes in the individual leg markets are available to all orders but are not advertising a particular strategy. They should not be granted a guaranteed allocation in any of the leg markets resulting from the execution of a Complex Order. Complex Orders will thus execute against the individual legs of the Consolidated Book in strict price time. The Exchange also proposes to continue to allow the individual legs of Complex Orders to be executed in the minimum applicable trading increments in the designated series in order to achieve the total or net debit/credit, consistent with Rule 6.72.

For purposes of the firm quote rule, the Complex Order in the Consolidated Book shall be considered "firm" at the posted debit or credit.<sup>6</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

NYSE Arca believes the proposed rule change related to Complex Orders is appropriate in that Complex Orders are widely recognized by market participants as invaluable, both as an investment and for risk management and investment strategy. The proposed rule change would provide the opportunity for a more efficient mechanism for carrying out these strategies.

## B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

- (A) By order approve such proposed rule change; or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2008-54 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEArca-2008-54. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2008-54 and should be submitted on or before July 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-13066 Filed 6-10-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57930; File No. SR-NASDAQ-2008-017]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment No. 1, To Clarify the Listing of Additional Shares Notification Process

June 5, 2008.

## I. Introduction

On March 6, 2008, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify Nasdaq's listing of additional

<sup>6</sup> See Rule 602 of Regulation NMS, 17 CFR 242.602.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

shares notification process.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on April 10, 2008.<sup>4</sup> The Commission received no comments on the proposal as published. On May 7, 2008, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> This order provides notice of the proposed rule change, as modified by Amendment No. 1, and approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of the Proposal

Pursuant to Nasdaq Rules 4310(c)(17) and 4320(e)(15), a company is required to provide 15 days notice to Nasdaq prior to issuing securities or entering into transactions that would result in the issuance of securities in certain specified situations set forth in the rules. These notification requirements are intended to allow Nasdaq to make compliance determinations regarding stock issuances that are potentially subject to the shareholder approval rules.

Nasdaq proposes to make certain modifications to its rules governing the notification process for the listing of additional shares. First, Nasdaq proposes to clarify the timing of the notice requirement contained in Rules 4310(c)(17)(D) and 4320(e)(15)(D). Currently, the rules provide that notifications under these subparagraphs are required prior to “entering into” a transaction that may result in the potential issuance of common stock (or securities convertible into common stock) greater than 10% of either the total shares outstanding or the voting power outstanding on a pre-transaction basis. Nasdaq states that, in practice, it has treated this requirement as being satisfied if the company files the required notification 15 days before

issuing the securities, rather than 15 days prior to entering into the transaction. Because such interpretation is not transparent from the rule, Nasdaq proposes to revise these provisions so that it is clear that notice will instead be required prior to “issuing” such securities.

Second, Nasdaq proposes to modify the notice requirement contained in Rules 4310(c)(17)(A) and 4320(e)(15)(A) as it relates to companies relying on the exception to shareholder approval for inducement grants to new employees contained in Rule 4350(i)(1)(A)(iv).<sup>6</sup> Currently, the rule provides that an issuer is required to notify Nasdaq at least 15 calendar days prior to establishing or materially amending a stock option plan, purchase plan or other equity compensation arrangement pursuant to which stock may be acquired by officers, directors, employees, or consultants without shareholder approval. Nasdaq asserts that, because inducement grants can be made at the time the employment offer is accepted, companies may not be able to provide 15 days of advance notice. Therefore, Nasdaq proposes to modify the notice requirement to require notification of such inducement grants no later than the earlier of: (1) Five calendar days after entering into the agreement to issue the securities; or (2) the date of the public announcement of the award required by Rule 4350(i)(1)(A)(iv).<sup>7</sup>

Third, Nasdaq proposes to amend Rules 4310(c)(17) and 4320(e)(15) to clarify that the notifications required by these rules must be made on a Listing of Additional Shares (“LAS”) Notification Form<sup>8</sup> and that Nasdaq encourages companies to file the form as soon as practicable. In addition, in an effort to provide transparency to the consequences of failing to timely file LAS notifications, Nasdaq proposes to amend the rules to specifically state that if a company fails to timely file the LAS notification, Nasdaq may issue a Staff Determination (pursuant to the Rule 4800 Series) that is a public reprimand letter or a delisting determination. Nasdaq notes that, in determining whether to issue a Staff Determination, and whether such a Staff Determination would be a delisting determination or a

public reprimand letter, Nasdaq would consider whether the issuer has demonstrated a pattern of late filings, the length of such filing delays, the reason for the delays, whether the issuer has been contacted concerning previous violations, whether the underlying transactions were themselves non-compliant, and whether the issuer has taken steps to assure that future violations will not occur.

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.<sup>10</sup>

The Commission believes that amending the timing requirement in Rules 4310(c)(17)(D) and 4320(e)(15)(D) to require that notification be made 15 days prior to issuing securities, rather than prior to entering into the specified transactions, will provide issuers certainty as to what point in a transaction the latest notification can be provided under Nasdaq’s rule, as well as eliminate any ambiguity surrounding the application of this rule. Further, this proposed rule change will make the timing requirement in subparagraph (D) of Rules 4310(c)(17) and 4320(e)(15) consistent with the timing requirement for notification of other types of issuances of stock under the rules, which require notification 15 days prior to the issuance of securities.<sup>11</sup> At the same time, Nasdaq has assured the Commission that 15 days notice prior to issuance should continue to give

<sup>3</sup> As part of the proposed rule filing, the Exchange submitted a revised Listing of Additional Shares Notification Form conforming the instructions on the Form to the corresponding proposed rule changes.

<sup>4</sup> See Securities Exchange Act Release No. 57616 (April 3, 2008), 73 FR 19540.

<sup>5</sup> In Amendment No. 1, the Exchange modified the proposed notice requirement in Rules 4310(c)(17)(A) and 4320(e)(15)(A) relating to companies relying on the exception to shareholder approval for inducement grants to new employees contained in Rule 4350(i)(1)(A)(iv). In the original filing, Nasdaq proposed that notice of such an inducement grant would be required no later than five calendar days after entering into the agreement to issue securities. In Amendment No. 1, Nasdaq proposed to modify this notification requirement so that notice of an inducement grant must be provided no later than the earlier of: (1) Five calendar days after entering into the agreement to issue securities; or (2) the date of the public announcement of the award required by Rule 4350(i)(1)(A)(iv).

<sup>6</sup> Rule 4350(i)(1)(A)(iv) allows an exception to the requirement to obtain shareholder approval for equity compensation for certain “issuances to a person not previously an employee or director of the company, or following a bona fide period of non-employment, as an inducement material to the individual’s entering into employment with the company.”

<sup>7</sup> See Amendment No. 1, *supra* note 5.

<sup>8</sup> See *supra* note 3.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> In particular, paragraph (B) of Rules 4310(c)(17) and 4320(e)(15) require issuers to notify Nasdaq 15 calendar days *prior to issuing securities* that may potentially result in a change of control of the issuer. Further, paragraph (C) requires issuers to notify Nasdaq 15 calendar days *prior to issuing any common stock* in connection with the acquisition of the stock or assets of another company, if any officer or director or substantial shareholder of the issuer has a 5% or greater interest in the company to be acquired or in the consideration to be paid. (emphasis added)

Nasdaq enough time to review the LAS notifications to ensure that stock issuances comply with the Nasdaq rules and, in particular, Nasdaq's shareholder approval requirements. As such, the Commission believes that the proposed rule change is consistent with the protection of investors and the public interest. The Commission also notes that the proposed rule language and the instructions to the LAS Notification Form urge issuers to file the form as soon as practicable, even if all of the relevant terms of the transaction or required documentation are not yet available. The Commission would hope that issuers would provide the required LAS Notification Form to Nasdaq as soon as possible to ensure timely compliance with any shareholder approval that may be required.

The Commission also believes that the modification to the timing requirement for companies making an inducement grant is appropriate for this narrow category of stock issuances. The Commission notes that Nasdaq has represented that, as a practical matter, it often is not possible for companies to provide advance notice of inducement grants, because such grants are often made at the time the employment offer is accepted. Accordingly, modifying the timing requirement to require companies to provide notice to Nasdaq no later than the earlier of: five calendar days after entering into the agreement to issue the securities; or the date of the public announcement of the award,<sup>12</sup> should make it more feasible for companies to timely meet the notification requirement. At the same time, the Commission believes that the modified timing requirement is consistent with the protection of investors and the public interest because such inducement grants are permitted without shareholder approval pursuant to Nasdaq Rule 4350(i)(1)(A)(iv). Therefore, unlike other stock issuances under Nasdaq's shareholder approval rules, Nasdaq does not need to make a compliance determination as to whether shareholder approval is required prior to the issuance. The Commission notes, however, that Nasdaq still would need to make a determination that the inducement grant meets the requirements of the exception provided in Nasdaq Rule 4350(i)(1)(A)(iv).<sup>13</sup> As

such, the Commission believes that the modified timing requirement for inducement grants is appropriate and balances the timing needs of issuers relying on the inducement grant exception with Nasdaq's compliance responsibility to ensure that the issuer is appropriately relying on the inducement grant exception, and has met the Rule 4350(i)(1)(A)(iv) requirements for doing so.

Finally, the Commission believes that the additional proposed changes provide clarity and transparency to the operation of the notification requirements. In particular, the proposed changes clarify that notifications must be made on the LAS Notification Form and that Nasdaq encourages companies to file the form as soon as practicable even if all of the relevant terms are not yet known. The Commission also notes that it reviewed Nasdaq's revised LAS Notification Form and believes that the instructions on the form appropriately reflect the corresponding proposed rule changes. Further, the proposed changes clarify the consequences of failing to timely file the form by expressly stating that in such instances, Nasdaq may issue a Staff Determination that is either a public reprimand letter or a delisting determination. In this regard, the Commission notes that it expects Nasdaq to carefully monitor compliance with the notification requirements and to take appropriate action as necessary. In particular, because of the importance of shareholder approval, the Commission expects that in cases where failure to timely file the notification form is coupled with a failure to meet the shareholder approval requirements, Nasdaq will take action that is suitable for violations of such rules.

The Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 1, the Exchange modified the proposed notice requirement for companies issuing inducement grants to new employees. In the original filing,

issuances to a person not previously an employee or director of the company, or following a bona fide period of non-employment, as an inducement material to the individual's entering into employment with the company, provided such issuances are approved by either the issuer's independent compensation committee or a majority of the issuer's independent directors. Promptly following an issuance of any employment inducement grant in reliance on this exception, a company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

Nasdaq proposed that notice of such an inducement grant would be required no later than five calendar days after entering into the agreement to issue securities. In Amendment No. 1, Nasdaq proposed to modify this notification requirement so that notice of an inducement grant must be provided no later than the earlier of: (1) Five calendar days after entering into the agreement to issue securities; or (2) the date of the public announcement of the award required by Rule 4350(i)(1)(A)(iv). The Commission believes that the changes in Amendment No. 1 ensure that Nasdaq receives appropriate notice about an inducement grant no later than the date that the public is notified about such issuance pursuant to Rule 4350(i)(1)(A). As such, the Commission believes that Amendment No. 1 raises no new or novel regulatory issues and is consistent with the protection of investors and the public interest. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>14</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2008-017 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NASDAQ-2008-017. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements

<sup>12</sup> See Nasdaq Rule 4350(i)(1)(A)(iv), which requires that, promptly following the issuance of any employment inducement grant made in reliance on the exception in such rule, a company must disclose in a press release the material terms of the grant.

<sup>13</sup> Specifically, Rule 4350(i)(1)(A)(iv) provides that shareholder approval is not required for

<sup>14</sup> 15 U.S.C. 78s(b)(2).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2008-017 and should be submitted on or before July 2, 2008.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-NASDAQ-2008-017), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

[FR Doc. E8-13067 Filed 6-10-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57921; File No. SR-NYSEArca-2008-46]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing and Trading of Shares of the NETS ISEQ 20 Index Fund (Ireland)

June 4, 2008.

## I. Introduction

On May 8, 2008, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade the shares ("Shares") of the NETS ISEQ 20 Index Fund (Ireland) ("Fund") issued by the NETS Trust ("Trust"). The proposed rule change was published for comment in the **Federal Register** on May 15, 2008 for a 15-day comment period.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

## II. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 5.2(j)(3), the Exchange's listing standards for Investment Company Units ("ICUs").<sup>4</sup> The Fund is an "index fund" that seeks to provide investment results that correspond generally to the price and yield performance, before fees and expenses, of publicly-traded securities in the aggregate in the Irish market, as represented by the ISEQ 20<sup>®</sup> ("Index"). The primary market for securities in the Index is the Irish Stock Exchange.

The Exchange represents that the Index for the Fund does not meet all of the "generic" listing requirements of Commentary .01(a)(B) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of ICUs based on international or global indexes.<sup>5</sup> Specifically, the Index meets all such requirements except for those set forth in Commentary .01(a)(B)(3).<sup>6</sup> The Exchange represents

that: (1) Except for the requirement under Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3) relating to the five most heavily weighted component stocks, the Shares of the Fund currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to ICUs will apply to the Shares; and (3) the Trust is required to comply with Rule 10A-3 under the Act<sup>7</sup> for the initial and continued listing of the Shares. In addition, the Exchange represents that the Shares will comply with all other requirements applicable to ICUs including, but not limited to, requirements relating to the dissemination of key information such as the Index value and Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, and Information Bulletin to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of ICUs.<sup>8</sup>

## III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act<sup>9</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change should not significantly affect the protection of investors or the public interest or

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 57805 (May 8, 2008), 73 FR 28178.

<sup>4</sup> ICUs are securities that represent interests in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). See NYSE Arca Equities Rule 5.2(j)(3).

<sup>5</sup> NYSE Arca Equities may approve a series of ICUs based on equity security components for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Act, if such series of ICUs satisfies the "generic" listing requirements that are set forth under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) and have been approved by the Commission. See Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3); 17 CFR 240.19b-4(e).

<sup>6</sup> The Exchange states that the Index satisfies the first requirement under Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3) that the most heavily weighted component stock shall not exceed 25% of the weight of the index or portfolio. However, the Index fails to meet the second requirement of Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3) that the five most heavily weighted component stocks shall not exceed 60% of the weight of the Index. The Exchange states that, as of April 18, 2008, the five most heavily weighted component stocks represented 68.7% of the Index weight.

<sup>7</sup> See 17 CFR 240.10A-3.

<sup>8</sup> See, e.g., Securities Exchange Act Release Nos. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR-NYSEArca-2006-86) (approving generic listing standards for ICUs based on international or global indexes); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14) (approving generic listing standards for ICUs and Portfolio Depositary Receipts); and 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-98-29) (approving rules for the listing and trading of ICUs).

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

impose any significant burden on competition. The Commission notes the Exchange's representations that, although the Index fails to meet the requirement relating to the five most heavily weighted component stocks set forth in Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3) by 8.7%,<sup>12</sup> the Shares currently satisfy all of the other applicable generic listing standards under NYSE Arca Equities Rule 5.2(j)(3), and will be subject to all of the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to ICUs.

Additionally, the Exchange represents that the Shares will comply with all other requirements applicable to ICUs<sup>13</sup> and that the Trust is required to comply with Rule 10A-3 under the Act.<sup>14</sup>

The Commission finds good cause for approving the proposed rule change before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that, because the Shares comply with all of the NYSE Arca Equities generic listing standards for ICUs (except for missing the requirement relating to the five highest weighted components of the Index), the listing and trading of the Shares by NYSE Arca does not appear to present any novel or significant regulatory issues or impose any significant burden on competition. For these reasons, the Commission believes that accelerated approval of the proposed rule change should provide additional choices for investors in, and promote additional competition in the market for, ICUs. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change on an accelerated basis.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-NYSEArca-2008-46) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-13040 Filed 6-10-08; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57922; File No. SR-NYSEArca-2008-55]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Pilot Program for Initial and Continued Financial Listing Standards for Common Stock of Operating Companies Until November 30, 2008

June 4, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 28, 2008, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), has amended the rules governing NYSE Arca, LLC (also referred to as the "NYSE Arca Marketplace"), which is the equities trading facility of NYSE Arca Equities, on a pilot program basis (the "Pilot Program") to amend the initial and continued financial listing standards for common stock of operating companies. The Pilot Program expires on May 31, 2008. The Exchange proposes to extend the Pilot Program until November 30, 2008.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change.

The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

NYSE Arca has amended on a pilot program basis the rules governing the NYSE Arca Marketplace to amend the financial listing standards for common stock of operating companies.<sup>5</sup> On October 3, 2007, the Commission approved the Exchange's request to amend the Pilot Program to, among other things, make the initial listing standards more restrictive and exclude from qualification some companies that currently qualify to list but whose size or financial performance is not consistent with that kind of issuer NYSE Arca intends to list on the NYSE Arca Marketplace.<sup>6</sup> The Pilot Program expires on May 31, 2008. The Exchange proposes to extend the Pilot Program until November 30, 2008.

Based on the results of the Pilot Program, the Exchange has determined that the Pilot Program has met its expectations. As a result, the Exchange intends to file a proposal to permanently adopt the Pilot Program.

##### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and

<sup>5</sup> The Commission initially approved the Pilot Program for six months, until May 29, 2007. See Securities Exchange Act Release No. 54796 (November 20, 2006), 71 FR 69166 (November 29, 2006) (SR-NYSEArca-2006-85). The Pilot Program was subsequently extended for an additional six months, until November 30, 2007. See Securities Exchange Act Release No. 55838 (May 31, 2007), 72 FR 31642 (June 7, 2007) (SR-NYSEArca-2007-51). The Pilot Program was extended for an additional six months, until May 31, 2008. See Securities Exchange Act Release No. 56885 (December 3, 2007), 72 FR 69272 (December 7, 2007) (SR-NYSEArca-2007-123).

<sup>6</sup> See Securities Exchange Act Release No. 56606 (October 3, 2007), 72 FR 57982 (October 11, 2007) (SR-NYSEArca-2007-69).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> See *supra* note 6.

<sup>13</sup> See *supra* note 8 and accompanying text.

<sup>14</sup> See 17 CFR 240.10A-3.

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

open market and a national market system.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period.

The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the proposal would allow the Pilot Program to continue without any interruption, until November 30, 2008. The Commission further notes that no comments were received on the Pilot

Program. The Commission designates the proposal to become operative upon filing.<sup>12</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>13</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2008-55 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2008-55. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will

be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2008-55 and should be submitted on or before July 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-13041 Filed 6-10-08; 8:45 am]

BILLING CODE 8010-01-P

## **SOCIAL SECURITY ADMINISTRATION**

### **Agency Information Collection Activities: Proposed Request and Comment Request**

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the Agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Reports Clearance Officer to the addresses or fax numbers listed below.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202-395-6974, E-mail address: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov); (SSA) Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-965-6400, E-mail address: [OPLM.RCO@ssa.gov](mailto:OPLM.RCO@ssa.gov).

I. The information collections listed below are pending at SSA. SSA will

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>14</sup> 17 CFR 200.30-3(a)(12).



submit them to OMB within 60 days from the date of this notice. Therefore, submit your comments to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410-965-0454 or by writing to the address listed above.

1. *Supplemental Security Income (SSI)—Quality Review Case Analysis—0960-0133*. SSA uses Form SSA-8508-BK, which covers all elements of SSI eligibility, in a personal interview with a sample of SSI recipients. SSA uses the gathered information to assess the effectiveness of Supplemental Security Income (SSI) policies and procedures and to determine payment accuracy rates. Respondents are recipients of payments.

*Type of Request:* Revision of an OMB-approved information collection.

*Number of Respondents:* 3,900.

*Frequency of Response:* 1.

*Average Burden per Response:* 60 minutes.

*Estimated Annual Burden:* 3,900 hours.

2. *Waiver of Supplemental Security Income Payment Continuation—20 CFR 416.1400-416.1422-0960-NEW*.

Claimants who initially elect payment continuation must complete Form SSA-263 to request SSA waive or stop payments until there is a decision on their appeals. SSA uses the information to waive or stop payments and as proof claimants understand their due process rights. Respondents are SSI recipients who wish to stop or waive payments during the appeals process.

*Type of Request:* Existing Information Collection in Use without an OMB Number.

*Number of Respondents:* 3,000.

*Frequency of Response:* 1.

*Average Burden per Response:* 5 minutes.

*Estimated Annual Burden:* 250 hours.

II. SSA has submitted the information collections listed below. Your comments on the information collections will be most useful if OMB and SSA receive them within 30 days from the date of this publication. You can request a copy of the information collections by e-mail, [OPLM.RCO@ssa.gov](mailto:OPLM.RCO@ssa.gov), fax 410-965-6400, or by calling the SSA Reports Clearance Officer at 410-965-0454.

1. *Application for Supplemental Security Income—20 CFR 416.207 and 416.305-416.335, Subpart C-0960-0229*. SSA has prescribed Form SSA-8000 as the application for SSI payments. SSA uses the information gathered on SSA-8000 to determine whether claimants meet all statutory and regulatory requirements for SSI eligibility and the amount of such payments. The respondents are applicants for SSI payments.

*Type of Request:* Revision of an OMB-approved information collection.

Type of response	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
Paper .....	25,625	1	41	17,510
MSSICS .....	138,120	1	36	82,872
MSSICS w/ Signature Proxy .....	1,117,515	1	35	651,884
Totals .....	1,281,260	.....	.....	752,266

SSA is making the following corrections to the 60-Day Notice published on March 26, 2008 at 73 FR 16087: we changed the type of request to a revision, and revised the burden information to include both regular MSSICS screens and MSSICS screens including the Signature Proxy application.

2. *Integrated Registration Services (IRES) System—20 CFR 401.45-0960-0626*. The IRES System registers and authenticates individuals, businesses, organizations, entities, and government agencies to use the eService Internet and telephone applications for requesting and exchanging business data with SSA, and issues them a User Identification Number (User ID) and a password. In addition, this process verifies the identity of individuals who use SSA's Business Services Online. Respondents are employers and third party submitters of wage data, business entities providing taxpayer identification information, and data exchange partners conducting business in support of Social Security programs.

*Type of Request:* Revision of an OMB-approved information collection.

*Number of Respondents:* 1,300,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 2 minutes.

*Estimated Annual Burden:* 43,333 hours.

Dated: June 5, 2008.

**Elizabeth A. Davidson,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. E8-13061 Filed 6-10-08; 8:45 am]

**BILLING CODE 4191-02-P**

## DEPARTMENT OF STATE

### [Public Notice 6253]

#### Culturally Significant Objects Imported for Exhibition Determinations: "Andrea Riccio: Renaissance Master of Bronze"

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999,

as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Andrea Riccio: Renaissance Master of Bronze" to be displayed at The Frick Collection, New York, New York, imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Frick Collection, New York, New York, from on or about October 15, 2008, until on or about January 18, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Wolodymyr Sulzysky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453-8050). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: June 3, 2008.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E8-13078 Filed 6-10-08; 8:45 am]

BILLING CODE 4710-05-P

## DEPARTMENT OF STATE

[Delegation of Authority No. 166-2]

### Delegation by the Deputy Secretary to the Legal Adviser of Authority To Settle Claims Under the Federal Tort Claims Act and 22 U.S.C. 2669-1

By virtue of the authority vested in the Secretary of State, including section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), and by the Federal Tort Claims Act (28 U.S.C. 2671 *et seq.*), and 22 U.S.C. 2669-1, and delegated to the Deputy Secretary of State pursuant to Delegation of Authority 245 of April 23, 2001, I hereby delegate to the Legal Adviser and the Deputy Legal Advisers authority to consider, ascertain, adjust, determine, compromise and settle claims capable of administrative settlement under the Federal Tort Claims Act and 22 U.S.C. 2669-1, except claims arising out of activities of the International Boundary and Water Commission.

The Legal Adviser may redelegate to the Assistant Legal Adviser and Deputy Assistant Legal Adviser responsible for claims matters the functions delegated in the preceding paragraph, including authority to deny all claims.

Any authority covered by this delegation may also be exercised by the Secretary or the Deputy Secretary.

This Delegation of Authority supersedes DA-166.

This Delegation of Authority shall be published in the **Federal Register**.

Dated: May 30, 2008.

**John D. Negroponte,**

*Deputy Secretary of State, Department of State.*

[FR Doc. E8-13070 Filed 6-10-08; 8:45 am]

BILLING CODE 4710-08-P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket No. DOT-OST-2008-0088]

### Agency Information Collection; Request for Comments; Clearance of Renewal Approval of Information Collection: Procedures for Transportation Drug Alcohol Testing Program

**AGENCY:** Office of the Secretary (OST) DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, Public Law 104-13, (44 U.S.C. 3501 *et seq.*) this notice announces the Information Collection Request, abstracted below, is being forwarded to the Office of Management and Budget for extension of the currently approved Procedures for Transportation Drug and Alcohol Testing Program. On March 17, 2008 the Office of Drug and Alcohol Policy and Compliance (ODAPC) published a 60-day notice in the **Federal Register** (73 FR 14300) Docket # OST-2008-0088, informing the public of ODAPC's intention to extend an approved information collection. Specifically, ODAPC solicited comments on whether the information collection is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility. We asked whether the Department's estimate of the burden of the proposed information collection was accurate and for ways to enhance the quality, utility, and clarity of the information to be collected. The Department sought ways to minimize the burden for those who would have to provide information, including the use of automated collection techniques or other forms of information technology. One response, which contained several comments, was made to the docket. Among his comments, the respondent supported the Department's estimated burden hours associated with the collection and handling of each form and provided suggestions for updating the Alcohol Testing Form (ATF) and Management Information System (MIS) form. Each of the respondent's comments were addressed and are explained in the supporting statement to OMB. The ATF and MIS were updated to include an updated Paperwork Reduction Act Burden Statement, the current address of the Department, and DOT form numbers were added. We provided additional instructions on the reverse

side of Page 3 of the ATF that tamper-evident tape must not obscure the printed information. Also, the legends in the test result boxes on the front of the ATF were adjusted and printed in a smaller font so they don't obscure test results printed directly on the ATF.

**DATES:** Written comments should be submitted by July 11, 2008 and sent to the attention of the DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket library, Room 10102, 725 17th Street, NW., Washington, DC 20503 or [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) (e-mail).

**FOR FURTHER INFORMATION CONTACT:** Bohdan Baczara, Office of Drug and Alcohol Policy and Compliance, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W62-300, Washington, DC 20590.

### SUPPLEMENTARY INFORMATION:

*Title:* Procedures for Transportation Drug and Alcohol Testing Program.

*OMB Control No.:* 2105-0529.

*Form No.:* DOT F 1380 Alcohol Testing Form (ATF) and DOT F 1385 DOT Drug and Alcohol Testing Management Information System (MIS).

*Affected Entities:* Transportation Industry (*i.e.*, Federal Aviation Administration, Federal Transit Administration, Federal Railroad Administration, Federal Motor Carrier Safety Administration, and the Pipeline and Hazardous Materials Safety Administration) and the United States Coast Guard when calculating their random testing rates.

*Type of Review:* Clearance and Renewal.

*Frequency of Response:* Annually.

*Respondents:* 2,783,195.

*Total Annual Burden Hours*

*Requested:* 695,300.

*Abstract:* Under the Omnibus Transportation Employee Testing Act of 1991, DOT is required to implement a drug and alcohol testing program in various transportation-related industries. This specific requirement is elaborated in 49 CFR part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. Included in this program are the U.S. Department of Transportation Alcohol Testing Form (ATF) and the DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form. The ATF includes the employee's name, the type of test taken, the date of the test, and the name of the employer. Custody and control is essential to the basic purpose of the alcohol testing program. Data on each test conducted, including test results,

are necessary to document tests conducted and actions taken to ensure safety in the workplace. The MIS form includes employer specific drug and alcohol testing information such as the reason for the test and the cumulative number of positive, negative and refusal test results. The MIS data is used by each of the affected DOT Agencies (i.e., Federal Aviation Administration, Federal Transit Administration, Federal Railroad Administration, Federal Motor Carrier Safety Administration, and the Pipeline and Hazardous Materials Safety Administration) and the United States Coast Guard when calculating their random testing rates.

*Comments Are Invited On:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC, on June 4, 2008.

**Donna K. Seymour,**  
Associate Chief Information Officer, IT Policy Oversight.

[FR Doc. E8-13096 Filed 6-10-08; 8:45 am]

BILLING CODE 4910-9X-P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending February 1, 2008

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*).

The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such

procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* DOT-OST-1997-3077.

*Date Filed:* January 29, 2008.

*Due Date for Answers, Conforming Applications, or Motion To Modify Scope:* February 19, 2008.

*Description:* Application of Servicios Aereos Profesionales, S.A., requesting renewal of its exemption and a foreign air carrier permit enabling it to conduct charter foreign air transportation of persons and property between the Dominican Republic and the United States.

*Docket Number:* DOT-OST-2000-6796.

*Date Filed:* January 29, 2008.

*Due Date for Answers, Conforming Applications, or Motion To Modify Scope:* February 19, 2008.

*Description:* Application of Aerolineas Santo Domingo, S.A., requesting renewal of its exemption and a foreign air carrier permit to conduct scheduled foreign air transportation of persons, property and mail between the Dominican Republic and the United States.

*Docket Number:* DOT-OST-2007-28073.

*Date Filed:* January 28, 2008.

*Due Date for Answers, Conforming Applications, or Motion To Modify Scope:* February 19, 2008.

*Description:* Application of Star Air A/S, requesting an amendment to its existing foreign air carrier permit to incorporate the new rights made available to European air carriers pursuant to the Air Transport Agreement between the United States and the European Community and the Member States of the European Union ("U.S.-EU Agreement"), and related exemption authority to enable it to provide the services covered while the Department evaluates Star Air's application to amend its foreign air carrier permit.

*Docket Number:* DOT-OST-2008-0043.

*Date Filed:* January 30, 2008.

*Due Date for Answers, Conforming Applications, or Motion To Modify Scope:* February 19, 2008.

*Description:* Application of Iberia Lineas Aereas de Espana, S.A. ("Iberia"), requesting an amendment to its foreign air carrier permit to engage in: (1) Scheduled and charter foreign air transportation of persons, property and mail from any point or points behind any Member State of the European Union via any point or points in any

Member State and via intermediate points to any point or points in the United States and beyond; (2) scheduled and charter foreign air transportation of persons, property and mail between any point or points in any member of the European Common Aviation Area and any point or points in the United States; (3) scheduled and charter all-cargo foreign air transportation between any point or points in the United States and any other point or points; (4) other charters subject to the Department's regulations; and (5) transportation authorized by any additional route rights made available to European Community airlines in the future. Iberia also requests exemption authority to enable it to engage in the above-described operations pending issuance of an amended foreign air carrier permit.

*Docket Number:* DOT-OST-2008-0046.

*Date Filed:* January 29, 2008.

*Due Date for Answers, Conforming Applications, or Motion To Modify Scope:* February 19, 2008.

*Description:* Application of Cargolux Airlines International, S.A., requesting an exemption and amended foreign air carrier permit to the full extent authorized by the new Air Transport Agreement between the United States and the European Community and exemption authority to conduct these services pending the issuance of an amended foreign air carrier permit.

**Renee V. Wright,**

Program Manager, Docket Operations,  
Federal Register Liaison.

[FR Doc. E8-12895 Filed 6-10-08; 8:45 am]

BILLING CODE 4910-9X-P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Aviation Proceedings, Agreements Filed the Week Ending February 1, 2008

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* DOT-OST-2008-0030.

*Date Filed:* January 28, 2008.

*Parties:* Members of the International Air Transport Association

*Subject:* TC3 Japan, Korea—South East Asia except between Korea (Rep. of) and Guam, Northern Mariana Islands

(Memo 1131), Minutes: TC3 Bangkok, 12–19 November 2007, (Memo 1157), Intended effective date: 1 April 2008.

*Docket Number:* DOT–OST–2008–0032.

*Date Filed:* January 28, 2008.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC3 Japan, Korea–South East Asia between Korea (Rep. of) and Guam, Northern Mariana Islands Resolutions & Specified Fares Tables, (Memo 1132), Minutes: TC3 Bangkok, 12–19 November 2007, (Memo 1157), Intended effective date: 1 April 2008.

*Docket Number:* DOT–OST–2008–0033.

*Date Filed:* January 28, 2008.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC3 Japan–Korea Resolutions & Specified Fares Tables, (Memo 1133), Minutes: TC3 Bangkok, 12–19 November 2007, (Memo 1157), Intended effective date: 1 April 2008.

*Docket Number:* DOT–OST–2008–0034.

*Date Filed:* January 28, 2008.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC3 Areawide Resolutions, (Memo 1134), Minutes: TC3 Bangkok, 12–19 November 2007, (Memo 1157), Intended effective date: 1 April 2008.

*Docket Number:* DOT–OST–2008–0035.

*Date Filed:* January 28, 2008.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC3 South East Asia—South Asian Subcontinent Resolutions & Specified Fares Tables, (Memo 1135), Technical Correction: TC3 South East Asia—South Asian Subcontinent Resolutions & Specified Fares Tables, (Memo 1147), Minutes: TC3 Bangkok, 12–19 November 2007, (Memo 1157), Intended effective date: 1 April 2008.

*Docket Number:* DOT–OST–2008–0036.

*Date Filed:* January 28, 2008.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC3 Within South Asian Subcontinent, Resolutions & Specified Fares Tables, (Memo 1136), Minutes: TC3 Bangkok, 12–19 November 2007, (Memo 1157), Intended effective date: 1 April 2008.

*Docket Number:* DOT–OST–2008–0037.

*Date Filed:* January 28, 2008.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC3 Within South East Asia except between Malaysia and Guam, Resolutions & Specified Fares Tables,

(Memo 1137), Minutes: TC3 Bangkok, 12–19 November 2007, (Memo 1157), Intended effective date: 1 April 2008.

*Docket Number:* DOT–OST–2008–0038.

*Date Filed:* January 28, 2008.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC3 Japan, Korea—South Asian Subcontinent, Resolutions & Specified Fares Tables, (Memo 1138), Minutes: TC3 Bangkok, 12–19 November 2007, (Memo 1157), Intended effective date: 1 April 2008.

*Docket Number:* DOT–OST–2008–0039.

*Date Filed:* January 28, 2008.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC3 Japan, Korea–South West Pacific except between Korea (Rep. of) and America Samoa, Resolutions & Specified Fares Tables, (Memo 1139), Technical Correction: TC3 Japan, Korea–South West Pacific except between Korea (Rep. of) and America Samoa, Resolutions & Specified Fares Tables, (Memo 1143), Minutes: TC3 Bangkok, 12–19 November 2007, (Memo 1157), Intended effective date: 1 April 2008.

*Docket Number:* DOT–OST–2008–0040.

*Date Filed:* January 28, 2008.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC3 Japan, Korea–South West Pacific between Korea (Rep. of) and America Samoa, Resolutions & Specified Fares Tables, (Memo 1140), Minutes: TC3 Bangkok, 12–19 November 2007, (Memo 1157), Intended effective date: 1 April 2008.

*Docket Number:* DOT–OST–2008–0041.

*Date Filed:* January 28, 2008.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC3 Within South East Asia between Malaysia and Guam, Resolutions & Specified Fares Tables, (Memo 1141), Minutes: TC3 Bangkok, 12–19 November 2007, (Memo 1157), Intended effective date: 1 April 2008.

*Docket Number:* DOT–OST–2008–0042.

*Date Filed:* January 29, 2008.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC3 South West Pacific—South Asian Subcontinent, South East Asia Resolutions & Specified Fares Tables, (Memo 1142), Minutes: TC3 Bangkok, 12–19 November 2007, (Memo 1157), Intended effective date: 1 April 2008.

*Docket Number:* DOT–OST–2008–0047.

*Date Filed:* January 31, 2008.

*Parties:* Members of the International Air Transport Association.

*Subject:* PSC/RESO/140, 29th IATA Passenger Services Conference (PSC), Resolution 724—Ticket Notices, Intended effective date: 1 June 2008.

**Renee V. Wright,**

*Program Manager, Docket Operations Federal Register Liaison.*

[FR Doc. E8–12902 Filed 6–10–08; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Agency Information Collection Activity Seeking OMB Approval

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval of a new information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 20, 2008, vol. 73, no. 55, page 15042. This project involves the random and representative sampling of Flight Attendants currently employed by U.S. air carriers.

**DATES:** Please submit comments by July 11, 2008.

**FOR FURTHER INFORMATION CONTACT:** Carla Mauney at [Carla.Mauney@faa.gov](mailto:Carla.Mauney@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Federal Aviation Administration (FAA)

*Title:* National Flight Attendant Duty/Rest/Fatigue Survey.

*Type of Request:* Approval of a new collection.

*OMB Control Number:* 2120–XXXX.

*Form(s):* There are no FAA forms associated with this collection.

*Affected Public:* An estimated 12,000 Respondents.

*Frequency:* This information is collected annually.

*Estimated Average Burden Per Response:* Approximately 1 hour per response.

*Estimated Annual Burden Hours:* An estimated 12,000 hours annually.

*Abstract:* This project involves the random and representative sampling of Flight Attendants currently employed by U.S. air carriers. The goal of this effort is to identify the type of fatigue that flight attendants experience, the frequency with which they experience fatigue, and the consequences fatigue

may have on the safety of U.S. air carriers. The results obtained from this survey are intended to provide information to FAA policy makers regarding flight attendant rest and duty time.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to [aira\\_submission@omb.eop.gov](mailto:aira_submission@omb.eop.gov) or faxed to (202) 395-6974.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on June 3, 2008.

**Carla Mauney,**

*FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.*

[FR Doc. E8-12904 Filed 6-10-08; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Environmental Impact Statement: Prince George's County, MD

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed road project in Prince George's County, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Mr. Phillip Bello, Area Engineer, Federal Highway Administration DelMar Division, City Crescent Building, 10 South Howard Street, Suite 2450, Baltimore, MD 21201. Telephone: (410) 779-7156. Or Mr. Alan Straus, Project Manager, 707 N. Calvert Street, C-301, Baltimore, MD 21202. Telephone: (410) 891-9274.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the

Maryland State Highway Administration, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, Maryland Department of the Environment, and University of Maryland will prepare an Environmental Impact Statement (EIS) for roadway improvements, which address mobility and safety for travelers to and from the University of Maryland (UM) Campus from I-95/I-495 and points north, while providing enhanced access to the university.

The study will also address the university's growth and development goals, including plans for on and off-campus parking facilities. An improved connection between the I-95/I-495 interchange and the UM Campus is needed to address the future traffic congestion on the local roadways that serve the campus, traffic flow associated with special events at the university, safety of the surrounding transportation network, and multi-modal transportation. The safety of bicyclists and pedestrians will also be considered.

Letters describing the proposed action and soliciting comments were sent to appropriate Federal, State, and local government agencies, and to citizens and citizen groups who have previously expressed or are known to have an interest in this proposal. A Scoping Meeting was held in July of 2007. It is anticipated that an Alternate Public Workshop will be held in the Fall of 2008. Alternatives are presently being developed for the project. The length of the project would vary between the alternatives from approximately 2-4 miles.

A Draft EIS will be available for public and agency review and comment prior to the Public Hearing. Public notice will be given of the availability of the Draft EIS for review and of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning these proposed actions and EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation of

Federal programs and activities apply to this program.)

**Jitesh Parikh**

*Project Delivery Team Leader, FHWA DelMar Division, Baltimore, Maryland.*

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**BILLING CODE 4910-22-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2008-0160]

#### Medical Review Board Public Meeting

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of Medical Review Board (MRB) Public Meeting.

**SUMMARY:** FMCSA announces a public meeting of the Agency's MRB. The MRB public meeting will provide the public an opportunity to observe and participate in MRB deliberations about the revision and development of Federal Motor Carrier Safety Regulation (FMCSR) medical standards, in accordance with the Federal Advisory Committee Act (FACA).

**DATES:** The MRB meeting will be held from 9:00 a.m.-11:30 a.m. on July 18, 2008. Please refer to the preliminary agenda for this meeting in the **SUPPLEMENTARY INFORMATION** section of this notice for specific information.

**ADDRESSES:** The meeting will take place at the Embassy Suites Old Town Alexandria, 1900 Diagonal Road, Virginia Ballroom—Salon A, Alexandria, VA 22314. You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2008-0160 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a

comment. Please see the Privacy Act heading below.

**Docket:** For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

**Privacy Act:** Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at <http://Docketinfo.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**Information on Services for Individuals with Disabilities:** For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Jennifer Musick at 703-998-0189 ext. 237.

**SUPPLEMENTARY INFORMATION:** The preliminary agenda\* for the meeting includes:

0900-0920 Call to Order, Introduction and Agenda Review  
0920-0945 Medical Review Board Administrative Discussion  
0945-1015 Public Comment on Renal Disease  
1015-1045 MRB Deliberations on Renal Disease  
1045-1130 FMCSA Agency Update and Answers to Frequently Asked Questions  
1130 Call to Adjourn

\* Breaks will be announced on meeting day and may be adjusted according to schedule changes and other meeting requirements.

## Background

The U.S. Secretary of Transportation announced on March 7, 2006, the five medical experts who serve on FMCSA's Medical Review Board (MRB). Section 4116 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Pub. L. 109-59) requires the Secretary of Transportation with the advice of the MRB to "establish, review, and revise medical standards for operators of Commercial Motor Vehicles (CMVs) that will ensure that the physical condition of operators is adequate to enable them operate the vehicles safely." FMCSA is planning updates to the physical qualification regulations of CMV drivers, and the MRB will provide the necessary science-based guidance to establish realistic and responsible medical standards.

The MRB operates in accordance with the Federal Advisory Committee Act (FACA) as announced in the **Federal Register** (70 FR 57642, October 3, 2005). The MRB is charged initially with the review of all current FMCSA medical standards (49 CFR 391.41), as well as proposing new science-based standards and guidelines to ensure that drivers operating CMVs in interstate commerce, as defined in CFR 390.5, are physically capable of doing so.

## Meeting Participation

Attendance is open to the interested public, including medical examiners, motor carriers, drivers, and representatives of medical and scientific associations. Written comments for this MRB meeting will also be accepted beginning on June 11, 2008, and continuing until August 1, 2008, and should include the docket ID that is listed in the **ADDRESSES** section.

During the MRB meeting (0945-1015), oral comments may be limited depending on how many persons wish to comment; and will be accepted on a first come, first serve basis as requestors register at the meeting. The comments must directly address relevant medical and scientific issues on the MRB meeting agenda. For more information, please view the following Web site: <http://www.fmcsa.dot.gov/mrb>.

Issued on: June 4, 2008.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. E8-13103 Filed 6-10-08; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket ID FMCSA-2008-0137]

### Qualification of Drivers; Exemption Applications; Diabetes

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA).

**ACTION:** Notice of applications for exemptions from the diabetes standard; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 56 individuals for exemptions from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate commercial motor vehicles in interstate commerce.

**DATES:** Comments must be received on or before July 11, 2008.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2008-0137 using any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- **Mail:** Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- **Hand Delivery:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- **Fax:** 1-202-493-2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

**Docket:** For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your

comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

**Privacy Act:** Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78; Apr. 11, 2000). This information is also available at <http://Docketinfo.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 56 individuals listed in this notice have recently requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

##### **Qualifications of Applicants**

###### *Timothy R. Abraham*

Mr. Abraham, age 37, has had ITDM since 2004. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Abraham meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist

examined him in 2008 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Hampshire.

###### *Mark A. Arndt*

Mr. Arndt, 54, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Arndt meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from Illinois.

###### *David D. Canady*

Mr. Canady, 53, has had ITDM since 1990. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Canady meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Carolina.

###### *William M. Camp*

Mr. Camp, 45, has had ITDM since 2002. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Camp meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Georgia.

###### *Scott A. Cary*

Mr. Cary, 36, has had ITDM since 1980. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cary meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

###### *Eugene W. Clark, Jr.*

Mr. Clark, 51, has had ITDM since 2006. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Clark meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Wisconsin.

###### *Jeffrey D. Crabtree*

Mr. Crabtree, 48, has had ITDM since 2000. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Crabtree meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New Jersey.

###### *David C. Crawford*

Mr. Crawford, 59, has had ITDM since 2007. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or



resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Crawford meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oregon.

*David W. Dawley*

Mr. Dawley, 43, has had ITDM since 1990. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dawley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Illinois.

*Adam F. Demeter*

Mr. Demeter, 45, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Demeter meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from New York.

*Henry D. Dyer*

Mr. Dyer, 37, has had ITDM since 2004. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Dyer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Georgia.

*Stephen E. Foltz*

Mr. Foltz, 60, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Foltz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Missouri.

*Randall A. Ford*

Mr. Ford, 49, has had ITDM since 1988. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ford meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Iowa.

*Larry A. Fritz*

Mr. Fritz, 56, has had ITDM since 2006. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fritz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

*Clayton L. Funk*

Mr. Funk, 25, has had ITDM since 1989. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Funk meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Kansas.

*Bruce A. Gay*

Mr. Gay, 65, has had ITDM since 2000. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gay meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

*Jarret L. Gerber*

Mr. Gerber, 38, has had ITDM since 2005. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gerber meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Wisconsin.

*Frederick G. Gillespie*

Mr. Gillespie, 55, has had ITDM since 2005. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or

resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gillespie meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

*Jose L. Gonzales*

Mr. Gonzales, 37, has had ITDM since 2007. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gonzales meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

*Kevin Gumbrell*

Mr. Gumbrell, 43, has had ITDM since 2002. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gumbrell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Florida.

*Danny E. Helton*

Mr. Helton, 46, has had ITDM since 2006. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Helton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Ohio.

*Robert C. Hemeon*

Mr. Hemeon, 52, has had ITDM since 2005. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hemeon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Hampshire.

*Marcus L. Jackson*

Mr. Jackson, 35, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jackson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class chauffeur's license from Indiana.

*Richard S. Jackson*

Mr. Jackson, 57, has had ITDM since 2005. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jackson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable

nonproliferative diabetic retinopathy. He holds a Class A CDL from Georgia.

*William J. Jackson*

Mr. Jackson, 40, has had ITDM since 2000. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jackson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Iowa.

*Alan L. Johnson*

Mr. Johnson, 45, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Johnson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

*Nathan S. Kelley*

Mr. Kelley, 33, has had ITDM since 1987. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kelley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Alabama.

*Angela M. King*

Ms. King, 24, has had ITDM since 1992. Her endocrinologist examined her

in 2008 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. King meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2007 and certified that she does not have diabetic retinopathy. She holds a Class D operator's license from Illinois.

*Scott M. Lowry*

Mr. Lowry, 30, has had ITDM since 2003. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lowry meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Minnesota.

*Ramon A. Mateo*

Mr. Mateo, 68, has had ITDM since 2003. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mateo meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Illinois.

*Robert L. Mills, Jr.*

Mr. Mills, 56, has had ITDM since 1980. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the

past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mills meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Ohio.

*Richard Murphy*

Mr. Murphy, 30, has had ITDM since 1996. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Murphy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New Hampshire.

*Edward F. Murray*

Mr. Murray, 49, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Murray meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

*Peter H. Palen, Jr.*

Mr. Palen, 56, has had ITDM since 1997. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Palen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist

examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Maine.

*Travis L. Ploman*

Mr. Ploman, 38, has had ITDM since 1997. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ploman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

*Nicholas W. Pomnitz*

Mr. Pomnitz, 24, has had ITDM since 1995. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pomnitz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New Jersey.

*Thomas G. Riley, Jr.*

Mr. Riley, 56, has had ITDM since 2002. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Riley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Tennessee.

*Melvin D. Robertson*

Mr. Robertson, 54, has had ITDM since 2003. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Robertson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

*Robert A. Roskamp*

Mr. Roskamp, 70, has had ITDM since 2006. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Roskamp meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

*Brandon M. Ross*

Mr. Ross, 29, has had ITDM since 2004. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ross meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from North Dakota.

*Ulysses A. Santiago, Jr.*

Mr. Santiago, 54, has had ITDM since 2003. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the

assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Santiago meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class E operator's license from Louisiana.

*Jeremy S. Samiec*

Mr. Samiec, 29, has had ITDM since 1995. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Samiec meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Arizona.

*Patrick D. Schiller*

Mr. Schiller, 70, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schiller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

*Bruce D. Schmoyer*

Mr. Schmoyer, 59, has had ITDM since 2007. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes

using insulin, and is able to drive a CMV safely. Mr. Schmoyer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

*Joseph E. Sobiech*

Mr. Sobiech, 50, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sobiech meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

*John J. Sorce*

Mr. Sorce, 67, has had ITDM since 1992. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sorce meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Illinois.

*Donald J. Stabler*

Mr. Stabler, 31, has had ITDM since 2000. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stabler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that

he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

*Ronald L. Stigall*

Mr. Stigall, 38, has had ITDM since 1994. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stigall meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Arkansas.

*Cory C. Struble*

Mr. Struble, 35, has had ITDM since 1985. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Struble meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from North Dakota.

*James L. Swedenburg, Jr.*

Mr. Swedenburg, 51, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Swedenburg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Lawrence M. Tanner*

Mr. Tanner, 28, has had ITDM since 1981. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tanner meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from Nevada.

*Robert D. Tarkington*

Mr. Tarkington, 42, has had ITDM since 1999. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tarkington meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Alaska.

*Richard L. Thistle*

Mr. Thistle, 49, has had ITDM since 1975. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Thistle meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Massachusetts.

*Travis A. Udulutch*

Mr. Udulutch, 31, has had ITDM since 2007. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss

of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Udulutch meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Wisconsin.

*Joshua C. Webb*

Mr. Webb, 30, has had ITDM since 1984. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Webb meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Arkansas.

*Robert C. Whitney*

Mr. Whitney, 54, has had ITDM since 2007. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Whitney meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

**Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this Notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the Notice.

FMCSA notes that Section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A

Legacy for Users (SAFETEA-LU) requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).<sup>1</sup> The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 Notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified by the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Dated: June 4, 2008.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. E8-13147 Filed 6-10-08; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of denials.

**SUMMARY:** FMCSA announces its denial of 330 applications from individuals who requested an exemption from the Federal vision standard applicable to interstate truck and bus drivers and the reasons for the denials. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions does not provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, 202-366-4001, U.S. Department of Transportation, FMCSA, 1200 New Jersey Avenue, SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal vision standard for a renewable two-year period if it finds "such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption." The procedures for requesting an exemption are set out in 49 CFR part 381.

Accordingly, FMCSA evaluated 330 individual exemption requests on their merits and made a determination that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption program. Each applicant has, prior to this notice, received a letter of final disposition on his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final Agency action. The list published today summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denials.

The following 38 applicants lacked sufficient driving experience during the three-year period prior to the date of their application.

Atkinson, Ray C.,  
Bivens, Mark C.,  
Chance, Thomas A.,  
Christian, Travis M.,  
Chupp, John,  
Davis, Clayton T.,  
Edler, III, John E.,  
Engelen, Patricia,  
Evertson, Jess C.,  
Gilbert, Ron,  
Goldman, Gary E.,  
Gordy, David L.,  
Haltiwanger, Ivory,  
Haubrich, Eugene,  
Kauffman, Herman,  
Kaul, Bruce,  
Kell, William B.,  
Kelly, Thomas B.,  
Law, Stevie J.,  
Lettenberger, Steven A.,  
Logan, Timothy R.,  
Martin, Donald,  
Merckling, Doyle W.,  
Mullen, David A.,  
Nelson, Roger L.,  
Ottaway, David,  
Reinhard, James,  
Roeder, Michael A.,  
Runde, Faber A.,  
Salazar, Carlos E.,  
Sarphe, Jeffery E.,  
Seamster, Robert W.,  
Suess, Richard A.,  
Tallon, Thomas,  
Tye, Charles L.,  
Weiderhold, Russell S.,  
Wenger, Jeff B.,  
Wright, Jason D.

The following 52 applicants do not have any experience operating a CMV.

Bailey, Ryan B.,  
Beach, Steven W.,  
Berglund, Stanley K.,  
Bowermaster, Tammy L.,  
Broadstock, Donald R.,  
Bushard, Eric P.,  
Clifton, Richard T.,  
Davidson, Larry A.,  
Finnegan, Patrick J.,  
Garza, Aaron F.,  
Gomez, Roberto F.,  
Gossett, Timothy M.,  
Hammock, Jr., John W.,  
Happ, Michael A.,  
Harper, Kendrick L.,  
Harris, Charles,  
Hartzheim, Matthew L.,  
Hirdes, Cary,  
Hodo, Dustin M.,  
Holliday, Jr., William A.,  
Holloway, Jamie W.,  
Homan, Brandon M.,  
Irons, Jr., James S.,  
Jones, Austin R.,

<sup>1</sup> Section 4129(a) refers to the 2003 Notice as a "final rule." However, the 2003 Notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

Jones, Deborah A.,  
 Lackey, John D.,  
 Lockett, Antonio D.,  
 Madrigal, Daniel S.,  
 Maldonado, Edgardo L.,  
 Malone, Michael E.,  
 McCartney, Carlton L.,  
 Merrill, Beau R.,  
 Mickelson, Shane A.,  
 Milton, Robert E.,  
 Morris, Timothy J.,  
 Morrison, Kevin A.,  
 Murphy, Marvis L.,  
 Plunkett, Thomas B.,  
 Pollard, Todd J.,  
 Ramos, Arturo C.,  
 Roberts, William E.,  
 Servatius, Randy P.,  
 Shannon, Patrick L.,  
 Silva, Jr., Juan M.,  
 Spivey, Daniel L.,  
 Sprague, Brian W.,  
 Sullivan, Shannon S.,  
 Theis, Glenn R.,  
 Torres, Jr., Ramon,  
 Tyler, Jr., Raymond E.,  
 White, William S.,  
 Williams, Aloysious L.

The following 70 applicants do not have 3 years of experience driving a CMV on public highways with the vision deficiency.

Bader, Lisa A.,  
 Ballot, Frederick R.,  
 Boice, Frederick A.,  
 Brock, Richard W.,  
 Brown, Robert L.,  
 Burcham, Jimmy L.,  
 Cockrum, William R.,  
 Covert, LyDale M.,  
 Davis, Kelly J.,  
 Dellar, Andrew D.,  
 Delossantos, Felicia,  
 Derr, Gregory E.,  
 Doran, Edward T.,  
 Dukes, David,  
 Espinoza, Jr., Ralph,  
 Estrada, Sr., Henry,  
 Flores, Alvaro,  
 Frasier, Milan D.,  
 Fulkerson, Gerald E.,  
 Garvin, Sean T.,  
 Gibson, Omar,  
 Gragg, Danny L.,  
 Gutierrez, Jr., Vicente,  
 Gregerson, Paul A.,  
 Harrison, David,  
 Hayes, Patricia D.,  
 Hill, Robert C.,  
 Ingram, III, Warren H.,  
 Janke, Edward R.,  
 Jaso, Sr., Joe H.,  
 Johnson, Artie E.,  
 Johnson, Walter S.,  
 Jones, Donald S.,  
 Kelly, David L.,  
 Kimkowski, Kevin M.,  
 Knaack, Roger A.,

Lajoie, Daniel,  
 Macias, Tom,  
 Mancera, Carlos A.,  
 O'Keeffe, Kevin C.,  
 Painter, Ralph L.,  
 Pierce, Patricia H.,  
 Pineda, Louis A.,  
 Pitts, Douglas,  
 Rasmussen, Wesley J.,  
 Ratcliff, Donna S.,  
 Rice, Robert C.,  
 Rosenthal, Donald A.,  
 Rehnke, Jerald W.,  
 Russell, Christopher O.,  
 Shepherd, David F.,  
 Siron, Percival C.,  
 Smith, Sr., Richard A.,  
 Sosa, Oscar A.,  
 Statler, Randall C.,  
 Stockwell, Kenneth D.,  
 Susi, Jeffrey W.,  
 Tonkinson, Greg M.,  
 Truong, Quoc T.,  
 Vanderpool, Jr., George F.,  
 Varnum, Joseph K.,  
 Vaughn, Joseph L.,  
 Watkins, Sean M.,  
 Watts, Anthony J.,  
 Wiles, Kevin B.,  
 Wiley, Larry R.,  
 Williams, Jr., Olen L.,  
 Williams, Reggie,  
 Zanassi, Eric C.,  
 Zitzmann, Timothy G.

The following 40 applicants do not have 3 years of recent experience driving a CMV with the vision deficiency.

Angeles, Joseph,  
 Barnett, Jameson L.,  
 Barragan, Omar,  
 Blankenship, III, John L.,  
 Bolbat, Thomas L.,  
 Busby, James E.,  
 Carroll, Michael J.,  
 Davis, Robert Z.,  
 DeMaster, Jason D.,  
 Everett, Jr., Edward J.,  
 Frederick, Douglas R.,  
 Hachett, Jimmy E.,  
 Hanson, Ronald M.,  
 Hays, Michael L.,  
 Holley, Terry C.,  
 Hunt, Jefferson J.,  
 Johnson, Jr., Deward,  
 Johnson, Katie J.,  
 Martin, Neville,  
 Meyer, Douglas S.,  
 Mikulcik, Stephen W.,  
 Montoya, Pablo,  
 Moss, Charles,  
 Nabeshima, Erick G.,  
 Neil, Harry S.,  
 Peace, Anthony W.,  
 Probst, Rick L.,  
 Rossbach, Kenneth B.,  
 Salter, Johnny,  
 Skeete, Dana,

Snook, John T.,  
 Spooner, Tom L.,  
 Taylor, Richard E.,  
 Treinen, Michael J.,  
 Trosky, George R.,  
 Trupia, Larry,  
 Urscher, Eric A.,  
 Whitney, Terry B.,  
 Williams Jr., Robert L.,  
 Zagorica, Osman

The following 7 applicants do not have verifiable proof of commercial driving experience over the past three years under normal highway operating conditions:

Broadway, Herman A.,  
 Grantham, Anthony S.,  
 Lowery, Michael W.,  
 White, Jeffrey A.,  
 Whitehead, Wayne A.,  
 Lilly, Steven,  
 Parrott, Jr., Bobby L.

The following 44 applicants do not have sufficient driving experience over the past 3 years under normal highway operating conditions.

Araya, Christian G.,  
 Baxter, Roger D.,  
 Benna, Robert A.,  
 Bonillas, Mark S.,  
 Borne, Robert L.,  
 Botkins, David L.,  
 Casey, John K.,  
 Chaffee, Ryan C.,  
 Coburn, Sr., Curtis G.,  
 Cox, Bobby,  
 Davidson, Dwayne S.,  
 Fuentes, Henry U.,  
 Garcia, Rogelio,  
 Grison, Geno,  
 Hall, Julian R.,  
 Handzel, Michael J.,  
 Harmer, Scott M.,  
 Hartsell, Steven D.,  
 Haslam, Grant L.,  
 Holiday, Michael B.,  
 Johnson, Van G.,  
 Kinney, Kenneth L.,  
 Maxwell, Brian D.,  
 Mix, James A.,  
 Nideiwodin, Victor,  
 Nieves, Julio,  
 Osborn, Clinton E.,  
 Perez, Fernando,  
 Pomerleau, Frank W.,  
 Reyes, Angelo,  
 Richart, Herman D.,  
 Rothove, Melvin,  
 Sastre, Jaime F.,  
 Stewart, Ricky A.,  
 Thomas, Charles R.,  
 Turley, Charles E.,  
 Urmston, Donald L.,  
 VanBooven, Harold J.,  
 Vann, Robert C.,  
 White, Kirk J.,  
 Williams, Matthew M.,  
 Willson, Wilbur,



Wilson, Keith B.,  
Winkley, Michael S.

The following 14 applicants had commercial driver's licenses suspensions during the three-year review period in relation to a moving violation. Applicants do not qualify for an exemption with a suspension during the three-year period.

Adair, William L.,  
Bales, Jimmy,  
Christensen, Ryan J.,  
Demessa Michael D.,  
Douglas, Bobby R.,  
Figaro, Juan F.,  
Foster, Jeramie P.,  
Head, Jr., Clifton E.,  
Lockley, Robert,  
Malone, Emanuel N.,  
Martin, Jr., Edward H.,  
Ramirez, Ricardo,  
Sanford, Willie J.,  
Timmerman, David E.

The following 7 applicants do not hold a license which allowed operation of vehicles over 10,000 pounds for all or part of the three-year period.

Acrey, Sammy T.,  
George, Gerry A.,  
Helle, Kalen G.,  
Phipps, Donald R.,  
Routin, Kevin L.,  
Stabeno, Lawrence E.,  
Turner, Nickalous R.

The following 30 applicants were denied for miscellaneous/multiple reasons.

Bates, Danny K.,  
Bauer, Jeffery A.,  
Beauchamp, Robert O.,  
Bolton, Sarah D.,  
Bush, Arnold E.,  
Chapman, Edward C.,  
Coffin, Roland C.,  
Davenport, Timothy A.,  
Davis, David L.,  
Delamarter, Kenneth G.,  
Drevetzki, Mark P.,  
Elsesser, Barry L.,  
Estrella, Cliserio J.,  
Farnsworth, Gary P.,  
Field, Roy M.,  
Green, Billy D.,  
Haines, Thomas E.,  
Harrison, David,  
Harrison, Ernest L.,  
Hasty, Brett K.,  
Ladd, Harry A.,  
Llamas, Martin,  
Mariner, Mikeal W.,  
McVicker, James R.,  
Savely, Danny W.,  
Scholz, Duane R.,  
Sherfield, Sr., Timothy J.,  
Sneath, Larry D.,  
Taylor, Jessie J.,  
Turner, Roy W.

Two applicants, William R. Cummings and Francis Popp, had more than 2 serious CMV violations within a three-year period. Each applicant is allowed a total of 2 moving violations, one of which can be serious.

Three applicants, Christopher L. Kervin, Jose P. Martinez and Robert G. Springer, were charged with a moving violation in conjunction with a CMV accident, which is a disqualifying offense.

One applicant, John C. Towner, contributed to an accident while operating a CMV. Applicants do not qualify for an exemption if they have contributed to an accident during the three-year review period.

Two applicants, James Peltier and Inocensio Patino, did not have sufficient peripheral vision in the better eye to qualify for an exemption.

One applicant, Patrick Leahy, had other medical conditions making him otherwise unqualified under the Federal Motor Carrier Safety Regulations.

One applicant, Allen L. Blackwell, Sr., did not submit all of the required documentation and therefore presented no verifiable evidence that he met the terms and conditions of the Federal vision exemption program.

One applicant, Dale E. St. Germaine, was disqualified because his vision was not stable for the entire three-year review period.

Finally, the following 17 applicants met the current federal vision standards. Exemptions are not required for applicants who meet the current regulations for vision.

Acierno, Luigi,  
Benton, Thomas F.,  
Davis, Jeff,  
Forsberg, Ernest D.,  
Furan, Robert D.,  
Gonzalez, Juan C.,  
Frach, Jeff,  
Green, Billy D.,  
Hilliard, David H.,  
Horner, Charles,  
Lambert, Charles W.,  
Ports, Donald,  
Pyle, David T.,  
Lange, Royce E.,  
Stubrich, Dennis W.,  
Wade, Wayne L.,  
Yancey, Keith.

Issued on: June 5, 2008.

**Charles A. Horan,**  
*Acting Associate Administrator for Policy and Program Development.*

[FR Doc. E8-13148 Filed 6-10-08; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA-01-11426, FMCSA-03-16564, FMCSA-05-21711, FMCSA-05-22194, FMCSA-05-23099, FMCSA-06-23773]

### Qualification of Drivers; Exemption Renewals; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA, in an earlier notice, announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 13 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcement and concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

### SUPPLEMENTARY INFORMATION:

#### Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at <http://www.regulations.gov>.

#### Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The notice was published on March 21, 2008 (FR 73 15254), and the comment period ended on April 21, 2008.

#### Discussion of Comments

FMCSA received no comments in this proceeding.

## Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 13 renewal applications, FMCSA renews the Federal vision exemptions for Roy L. Allen, Lyle H. Banser, Lloyd J. Botsford, Walter M. Brown, Charley J. Davis, Paul D. Gaither, Thomas R. Hedden, Sergio A. Hernandez, Lucio Leal, Earl R. Mark, Michael R. Moore, Richard W. Neyens, and Bill L. Pearcy.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA.

The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: June 4, 2008.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. E8-13125 Filed 6-10-08; 8:45 am]

BILLING CODE 4910-EX-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

#### Mid-Continent Railway Historical Society, Inc.

[Docket Number FRA-2006-26300]

On March 15, 2007, FRA granted a waiver of compliance from certain provisions of the safety glazing standards, as prescribed by 49 CFR Section 223.11, *Requirements for existing locomotives*, to the Mid-Continent Railway Historical Society, Inc. (MCRY) for diesel-electric Locomotive Number 1256. Condition Number 1 of the above-referenced approval letter states: "This approval of the requirements of 49 CFR Section

223.11(c) shall apply to MCRY 1256 while operating on MCRY property at speeds not exceeding 10 mph." On December 31, 2007, MCRY asked FRA for reconsideration of Condition Number 1 to allow an increase in operating speed of the locomotive from 10 mph to 15 mph.

MCRY is a tourist railroad operating over 4.2 miles of private rights-of-way in rural Wisconsin, with a track speed of 15 mph. In addition, FRA previously granted safety glazing waivers to MCRY for two of their diesel locomotives with maximum operating speeds of 15 mph. The petitioner states that when more than one train is operated at a time, it places an undue hardship on them by restricting the speed of Locomotive Number 1256 to 10 mph. There have been no reported accidents/injuries at MCRY related to safety glazing, and the change would make the conditions of this waiver consistent with those of the two previously granted. Pursuant to the receipt of the waiver request, FRA is hereby providing the public an opportunity to comment on this waiver.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. All communications concerning these proceedings should identify the appropriate docket number (FRA-2006-26300) and may be submitted by one of the following methods:

- Web site: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 202-493-2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

Communications received within 30 days of the date of this notice or within 30 days following the filing of supporting safety data, whichever is later, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

All written communications concerning these proceedings are

available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

Issued in Washington, DC on June 5, 2008.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E8-13113 Filed 6-10-08; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

#### Additional Designation of Individuals Pursuant to Executive Order 13224

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of three newly-designated individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

**DATES:** The designation by the Director of OFAC of three individuals identified in this notice, pursuant to Executive Order 13224, is effective on June 5, 2008.

#### FOR FURTHER INFORMATION CONTACT:

Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622-2490.

#### SUPPLEMENTARY INFORMATION:

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (<http://www.treas.gov/ofac>) or via

facsimile through a 24-hour fax-on-demand service, tel.: 202/622-0077.

### Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701-1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001, terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of

Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On June 5, 2008 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and

other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, three whose property and interests in property are blocked pursuant to Executive Order 13224.

The list of designees is as follows:

ABD AL-KHALIQ, Adil Muhammad Mahmud (a.k.a. ABDUL KHALED, Adel Mohamed Mahmood; a.k.a. ABDUL KHALIQ, Adel Mohamed Mahmoud); DOB 2 Mar 1984; POB Bahrain; Passport 1632207 (Bahrain) (individual) [SDGT].

AL-SUBAIY, Khalifa Muhammad Turki (a.k.a. ALSUBAIE, Khalifa Mohd Turki; a.k.a. AL-SUBAIE, Khalifa Mohd Turki; a.k.a. AL-SUBAYI, Khalifa; a.k.a. BIN AL-SUAIY, Khalifa Turki bin Muhammad); DOB 1 Jan 1965; citizen Qatar; National ID No. 26563400140 (Qatar); Passport 00685868 (Qatar) (individual) [SDGT].

JAFFAR 'ALI, 'Abd al-Rahman Muhammad (a.k.a. JAFFAR, Abdulrahman Mohammad; a.k.a. JAFFER ALI, Abdul Rahman Mohamed; a.k.a. JAFFIR ALI, Abd al-Rahman; a.k.a. JAFFIR, 'Abd al-Rahman Muhammad; a.k.a. JAFIR 'ALI, 'Abd al-Rahman Muhammad; a.k.a. "ABU MUHAMMAD AL-KHAL"; a.k.a. "'ALI AL-KHAL"); DOB 15 Jan 1968; POB Muharraq, Bahrain; nationality Bahrain (individual) [SDGT].

Dated: June 5, 2008.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*  
[FR Doc. E8-13118 Filed 6-10-08; 8:45 am]

**BILLING CODE 4811-45-P**



# Federal Register

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**Wednesday,  
June 11, 2008**

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## **Part II**

## **Department of the Interior**

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**Fish and Wildlife Service**

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**50 CFR Part 32**

**2008–2009 Refuge-Specific Hunting and  
Sport Fishing Regulations; Final Rule**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 32**

RIN 1018-AU61

**2008–2009 Refuge-Specific Hunting and Sport Fishing Regulations****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

**SUMMARY:** The Fish and Wildlife Service adds one refuge to the list of areas open for sport fishing. We also amend certain regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2008–2009 season.

**DATES:** This rule is effective July 11, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Leslie A. Marler, (703) 358–2397; Fax (703) 358–2248.

**SUPPLEMENTARY INFORMATION:** The National Wildlife Refuge System Administration Act of 1966 closes national wildlife refuges in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or sport fishing, upon a determination that such uses are compatible with the purposes of the refuge and National Wildlife Refuge System (Refuge System or our/we) mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

We annually review refuge hunting and sport fishing programs to determine whether to include additional refuges or whether individual refuge regulations governing existing programs need modifications. Changing environmental conditions, State and Federal regulations, and other factors affecting fish and wildlife populations and habitat may warrant modifications to refuge-specific regulations to ensure the continued compatibility of hunting and sport fishing programs and to ensure that these programs will not materially interfere with or detract from the

fulfillment of refuge purposes or the Refuge System's mission.

Provisions governing hunting and sport fishing on refuges are in title 50 of the Code of Federal Regulations in part 32 (50 CFR part 32). We regulate hunting and sport fishing on refuges to:

- Ensure compatibility with refuge purpose(s);
- Properly manage the fish and wildlife resource(s);
- Protect other refuge values;
- Ensure refuge visitor safety; and
- Provide opportunities for quality fish and wildlife-dependent recreation.

On many refuges where we decide to allow hunting and sport fishing, our general policy of adopting regulations identical to State hunting and sport fishing regulations is adequate in meeting these objectives. On other refuges, we must supplement State regulations with more-restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined in the “Statutory Authority” section. We issue refuge-specific hunting and sport fishing regulations when we open wildlife refuges to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or fish, seasons, bag or creel (container for carrying fish) limits, methods of hunting or sport fishing, descriptions of areas open to hunting or sport fishing, and other provisions as appropriate. You may find previously issued refuge-specific regulations for hunting and sport fishing in 50 CFR part 32. In this rulemaking, we are also standardizing and clarifying the language of existing regulations.

**Plain Language Mandate**

In this rule we made some of the revisions to the individual refuge units to comply with a Presidential mandate to use plain language in regulations; as such, these particular revisions do not modify the substance of the previous regulations. These types of changes include using “you” to refer to the reader and “we” to refer to the Refuge System, using the word “allow” instead of “permit” when we do not require the use of a permit for an activity, and using active voice (i.e., “We restrict entry into the refuge” vs. “Entry into the refuge is restricted”).

**Statutory Authority**

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee, as amended by the National Wildlife Refuge System Improvement Act of 1997 [Improvement Act]) (Administration Act) and the

Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) (Recreation Act) govern the administration and public use of refuges.

Amendments enacted by the Improvement Act built upon the Administration Act in a manner that provides an “organic act” for the Refuge System similar to those that exist for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the Refuge System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus our Refuge System mission on conservation of fish, wildlife, and plant resources and their habitats. The Improvement Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible with the mission for which the refuge was established. The Improvement Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the Refuge System, through which the American public can develop an appreciation for fish and wildlife. The Improvement Act established six wildlife-dependent recreational uses, when compatible, as the priority general public uses of the Refuge System. These uses are: Hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop specific management plans for each refuge prior to opening it to hunting or sport fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge and the Refuge System mission. We ensure

initial compliance with the Administration Act and the Recreation Act for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and sport fishing in 50 CFR part 32. We ensure continued compliance by the development of comprehensive conservation plans, specific plans, and by annual review of hunting and sport fishing programs and regulations.

#### Response to Public Comment

In the July 24, 2006, **Federal Register** (71 FR 41864), we published a proposed rulemaking identifying refuges and their proposed hunting and/or fishing programs and invited public comments. We reviewed and considered all comments received by August 16, 2006, the end of a 30-day comment period that opened on the date of public filing (July 17, 2006). We received 24 comments on the proposed rule. We grouped the comments/responses by major issue area.

*Comment 1:* A commenter asked why on Delta National Wildlife Refuge in Louisiana we are limiting “recreational fishing” to 1/2 hour before and after daylight hours as there is no such limitation for commercial trawlers and fishermen. The commenter feels it is arbitrary to exclude recreational fishermen who may wish to nightfish for red drum or speckle trout during the hot summer.

*Response 1:* We close Delta NWR to all night activities, and we prohibit commercial activities on the refuge. There are several navigable waterways flowing through the interior of the refuge that are not under our jurisdiction. The State of Louisiana allows crabbing on those navigable waters but access to those areas would still be through the refuge, and thus we would prohibit access at night. All users of the refuge must abide by the same guidelines of access before and after legal sunset. We made no change to the rule as a result of this comment.

*Comment 2:* Several commenters asked why DeSoto National Wildlife Refuge in Iowa had changed its policy regarding removal of tree stands for bowhunters at the end of each hunting day as opposed to at the end of each season. They enumerated the following concerns: Putting up and taking down tree stands in the dark is dangerous and unsafe; the rule will cause rifle hunters to shoot from the ground instead of using stands thus creating unsafe

situations; carrying in and setting up tree stands each morning is noisy thus forecasting to the deer the arrival of hunters; it will limit the number of hunters physically able to transport their stands on a daily basis; and this change is unfair as the refuge was purchased with “Pittman-Roberts” money and would severely limit hunter access.

*Response 2:* We have decided not to adopt this amendment and, for this season, we will retain the 2005–2006 regulations, which ask hunters to remove their personal property from the refuge at the end of the season. We would remind hunters to please keep in mind the impact their blind has on other hunters and ask that they leave blinds up only for the periods in which the blinds will receive that hunter's use.

DeSoto National Wildlife Refuge, which consists of land the majority of which was purchased with Migratory Bird Conservation Fund dollars, does not require the use of tree stands by hunters for deer hunting. If the hunters believe it is unsafe to put up or take down a tree stand in the dark or in daylight, or if hunters perceive that issues such as noise or physical problems limit their success, they should use other methods to hunt deer such as ground blinds or hunting within easier walking distance to parking lots, etc. We do not regulate where hunters place themselves. The refuge management acknowledges there is inherent risk in any type of activity on a refuge. We strongly promote hunter safety in all of our hunts. Rifle and bow hunters are responsible for any shot they take. During the 2005 season rifle hunts, many hunters sat on the ground, used ground blinds, or simply sat on a bucket, and we had no reported accidents by hunters. Disabled hunters, conversely, use ground blinds. When hunters place a stand on Federal land, they are effectively claiming that section of ground as their own, whether that is their intention or not. Other hunters, coming through the area scouting for a spot to hunt, see the first hunter's stand and often leave the area because it has been “claimed.” Hunters on Federal land, while in the act of hunting, have the privilege to use an area for their hunt. However, when they are through hunting, they need to leave the area unclaimed so another hunter may have the same opportunity to hunt that spot and so that the nonhunting public may view an uncluttered landscape. We removed the language requiring daily removal of tree stands from DeSoto NWR's regulation.

*Comment 3:* Also at DeSoto NWR, in a related comment to the tree stand

issue, the commenter felt that a better rule would be to require all deer hunters to shoot a doe before they are allowed a buck, and for the refuge to return some of the refuge land that is grass back to agriculture crops, thereby keeping the deer on the refuge for the hunters and leaving a larger portion of the crops for winter food for wildlife.

*Response 3:* The technique of taking a doe before a buck is used to take more does on a specific area and has no bearing on the proposed rule (the same is true about habitat on the refuge). Enforcing an “earn a buck” hunt is costly and generally used as a last resort when an area cannot sufficiently fill its allotted doe tags to effectively manage the deer population on the refuge. DeSoto NWR has had no trouble filling needed tags for the deer hunts. As far as management of habitat, DeSoto has conducted extensive public reviews, including **Federal Register** comment periods, during the creation of the station's comprehensive conservation plan (CCP) in 2001. A major portion of the CCP states the types of habitat that the refuge will support. We decided that the refuge would reduce the acres in agricultural crop ground to 475 acres by 2015. The refuge is converting cropland acreage to more natural and regionally scarce habitats such as native grasslands, riparian forests dominated by cottonwood, and moist soil/wetland plant communities. We made no changes to the rule as a result of this comment.

*Comment 4:* In another comment related to DeSoto NWR, a commenter asked how our wildlife refuges can have different sets of rules concerning the application of tree stands for deer hunters in the many refuges across the country.

*Response 4:* For the most part, our refuge regulations are consistent with State regulations, which may reflect the variances in refuge decisions concerning changes in rules on the same issue from refuge to refuge. We also allow refuge managers the latitude to be more restrictive than the State when they deem it necessary and appropriate for their particular refuge. But differences between refuges occur even within the same State. In Montana, for example, Charles M. Russell NWR allows year-round stands, while Lee Metcalf NWR requires daily removal of stands. By this regulation, DeSoto NWR will continue to allow deer stands to remain in place for the entire season. We prefer that hunters leave them up only for the periods when they will receive regular use. We changed the regulation (see Response #2) to reflect this decision.

*Comment 5:* In a comment also related to DeSoto Refuge, the commenter said that the State regulations say that any stand put up on public ground becomes public property for others to use, and that this rule has served DeSoto well and should be continued.

*Response 5:* As discussed in #4 above, we adopt State regulations where we can, but we may also be more restrictive than the States. DeSoto NWR experienced many problems with this aspect of the State's policy concerning "ownership" of stands. Some hunters would erect six to eight stands to "block" an area, and very few hunters would use someone else's stand. On those rare occasions when hunters tried to use someone else's stand, we were informed that those hunters were threatened. For the reasons discussed in the comments above, we are changing the regulations to allow hunters to leave their blinds in for the season, however, we prefer that hunters limit their blind placement to those periods of regular use and only put up one blind per hunter.

*Comment 6:* Several commenters requested an extension of the 30-day public comment period to gather and examine each refuge's "opening package" and to allow more thoughtful review of the proposed rule. In connection with this, one commenter felt that we were in conflict with Executive Order 12996, "Management and General Public Use of the National Wildlife Refuge System," and the public involvement section therein and also felt that hunting programs are "generally inconsistent with refuge-specific purposes and represent an incompatible use."

*Response 6:* We disagree that the comment period is insufficient. The process of opening refuges is done in stages, with the fundamental work being done on the ground at the refuge and in the community where the program is administered. In these stages, the public is provided other opportunities to comment, for example, on the comprehensive conservation plans and the compatibility determinations. The second stage is when we publish the proposed rule in the **Federal Register** each summer for additional comment, commonly a 30-day comment period. In 2006, the proposed rule went on public file on July 17, published on July 24, and the public comment period ended August 16, 30 days after the date the document went on public file.

We make every attempt to collect all of the proposals from the refuges nationwide and process them expeditiously to maximize the time available for public review. We believe

that a 30-day comment period, through the broader publication following the earlier public involvement, gives the public sufficient time to comment and allows us to establish hunting and fishing programs in time for the upcoming seasons. Many of these rules also relieve restrictions and allow the public to participate in wildlife-dependent recreational activities on a number of refuges. Even after issuance of a final rule, we accept comments, suggestions, and concerns for consideration for any appropriate subsequent rulemaking.

Concerning the comment on Executive Order 12996 (March 25, 1996) (E.O. 12996) that hunting and/or fishing programs are inconsistent with refuge-specific purposes and represent an incompatible use, E.O. 12996 helped refine the mission and guiding principles of the Refuge System. It provided directives to the Secretary of the Interior in carrying out his trustee and stewardship responsibility of the Refuge System. Regarding public involvement, E.O. 12996 stated, "The public should be given a full and open opportunity to participate in decisions regarding acquisition and management of our National Wildlife Refuges." We believe we provide the public that opportunity, as discussed above. E.O. 12996 goes on to establish Public Use as one of the four guiding principles of the Refuge System. The President affirmed as one of these principles that "The Refuge System provides important opportunities for compatible wildlife-dependent recreational activities involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation." Further in E.O. 12996, the President directs the Secretary of the Interior "to recognize compatible wildlife-dependent recreational activities involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation as priority general public uses of the Refuge System through which the American public can develop an appreciation for fish and wildlife; to provide expanded opportunities for these priority public uses within the Refuge System when they are compatible and consistent with sound principles of fish and wildlife management, and are otherwise in the public interest; [to] ensure that such priority public uses receive enhanced attention in planning and management within the Refuge System; [and to] provide increased opportunities for families to experience wildlife-dependent recreation, particularly

opportunities for parents and their children to safely engage in traditional outdoor activities, such as fishing and hunting..." As discussed in this Response to Public Comment section and elsewhere in this **SUPPLEMENTARY INFORMATION** section, those refuges that have made decisions regarding hunting and/or fishing opportunities have complied with E.O. 12996 and the responsibilities and requirements mandated under the Administration Act and the Improvement Act addressing compatibility and consistency with refuge purposes. We made no changes to this rule as a result of this comment.

*Comment 7:* Several commenters expressed opposition to opening refuges to hunting and fishing and believe refuges should offer safe haven for wildlife.

*Response 7:* The National Wildlife Refuge System Administration Act of 1966 authorizes the Secretary to allow uses of any refuge area as long as those uses are compatible; and, in fact, the Administration Act specifically references hunting and fishing. Amendments to the Administration Act made by the National Wildlife Refuge System Improvement Act establish wildlife-dependent recreational uses as priority uses and include hunting and fishing in the definition of those uses.

The principal focus of the Improvement Act was to clearly establish a wildlife conservation mission for the Refuge System and provide managers clear direction to make determinations regarding wildlife conservation and public uses within the units of the Refuge System. The Service manages national wildlife refuges primarily for wildlife conservation, habitat protection, and biological integrity, and allows uses only when compatible with the refuge purpose(s). In passing the Improvement Act, Congress reaffirmed the System was created to conserve fish, wildlife, plants, and their habitats and would facilitate opportunities for Americans to participate in compatible wildlife-dependent recreation, including hunting and/or fishing on Refuge system lands. The Service has adopted policies and regulations implementing the requirements of the Improvement Act that refuge managers comply with when considering hunting and fishing programs. We made no changes to the rule as a result of this comment.

*Comment 8:* A commenter felt the Service erred in categorically excluding the proposed rule from National Environmental Policy Act (NEPA) review and believes that an Environmental Impact Statement (EIS) should have been prepared. They



further believe that we did not follow Endangered Species Act (ESA) mandates.

*Response 8:* We disagree. As discussed in **SUPPLEMENTARY INFORMATION**, we detail the steps that follow NEPA and ESA mandates. This final rule represents a compilation of a new sport fishing opening and corrects existing language for refuges listed in 50 CFR part 32. Cape May NWR has included the appropriate NEPA and ESA Section 7 compliance for the sport fishing opening package. The reference to a categorical exclusion in the proposed rule is no longer applicable to this final rule. Our NEPA compliance is the relevant environmental assessment for the sport fishing opening and the previously opened programs to which minor modifications are being made.

*Comment 9:* A commenter felt that members of the nonhunting public would be “cumulatively impacted by the Service’s vast expansion of hunting on refuges, because these nonhunters are foreclosed from enjoying refuges during hunting seasons due to the possibility of being shot at or viewing wounded birds or animals, thus limiting the recreational opportunities the refuges afford nonconsumptive recreationalists.”

*Response 9:* When we decide to open a refuge to any activity, we consider the impacts on and interrelationships of all users. The time that refuges are open to hunting as opposed to activities for nonconsumptive recreationalists is very limited, and we would restrict those areas where we allow hunting during those limited hunting seasons to hunters only, to avoid any possibility of visitors “being shot at.” Also, we stress the importance of game retrieval with hunters so the likelihood of “viewing wounded birds or animals” would be extremely slim. Many refuges even allow dogs to accompany the hunter for just that purpose. We made no changes to the rule as a result of this comment.

### Modifications From the Proposed Rule

In light of a U.S. District Court decision issued August 31, 2006, we made some changes to the rule as proposed on July 24, 2006, in the **Federal Register** (71 FR 41864). Pending completion of additional analysis, we are withdrawing from this rule the following: the opening of the hunting program at the new national wildlife refuge, Hamden Slough in Minnesota; and the expansion of activities at the following national wildlife refuges: Agassiz in Minnesota; Blackwater in Maryland; Whittlesey Creek in Wisconsin; and Upper Ouachita, Bayou Cocodrie, and Tensas River in Louisiana and the associated regulations dealing with those activities. Finally, we are removing the proposed modifications for Upper Mississippi River National Wildlife and Fish Refuge in the State of Minnesota published in the **Federal Register** on July 24, 2006 (71 FR 41864). On June 28, 2007, we published a proposed rule (72 FR 35380) in the **Federal Register** identifying amendments to the refuge-specific regulations for Upper Mississippi River National Wildlife and Fish Refuge and invited comments for 30 days. On September 7, 2007, we published a final rule (72 FR 51534) in the **Federal Register** amending the regulations for this refuge.

### Unchanged Elements From the Proposed Rule

The new sport fishing program at Cape May NWR in New Jersey remains in the rule as does a new listing for Holt Collier NWR (offering upland and big game hunting) in Mississippi, as it was created from the existing Yazoo NWR where the hunts had been opened previously. We are modifying the list of refuges in part 32 to reflect the four wetland management districts that are open to all four activities in Montana: Black Coulee, Creedman Coulee, Hewitt

Lake, and Lake Thibadeau. Finally, we are correcting the administrative errors in 50 CFR part 32. We discuss all of these actions later in this preamble under “Changes to 2008–2009 Hunting and Sport Fishing Season.”

### Curtailement of Fishing at Midway Atoll National Wildlife Refuge

On June 15, 2006, Presidential Proclamation 8031 established the Northwestern Hawaiian Islands Marine National Monument, which also encompasses the Hawaiian Islands National Wildlife Refuge and the Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial. In the context of this Proclamation only, we hereby prohibit sport fishing within the Midway Atoll Special Management Area. This proclamation and its implementation does not set a precedent or otherwise establish policy for other refuges within the National Wildlife Refuge System.

### Changes to the 2008–2009 Hunting and Sport Fishing Season

In preparation for new openings, we prepare and approve, at the appropriate Regional Office and in Washington, documentation of National Environmental Policy Act (NEPA) and the Endangered Species Act; and we consult with the State and, where appropriate, Tribal wildlife management agency. The Regional Director certifies that the opening of Cape May National Wildlife Refuge (State of New Jersey) to sport fishing has been found to be compatible with the purpose(s) for which the refuge was established and the Refuge System mission. Copies of the compatibility determinations for this refuge are available by request to the Regional office noted under the heading “Available Information for Specific Refuges.”

Table 1 summarizes our changes for the 2008–2009 season.

TABLE 1.—CHANGES FOR 2008–2009 HUNTING/FISHING SEASON

National wildlife refuge	State	Migratory bird hunting	Upland hunting	Big game hunting	Fishing
Cape May .....	NJ .....	Previously published .....	.....	Previously published .....	B.
Holt Collier .....	MS .....	Previously published .....	A .....	A.	
Black Coulee .....	MT .....	Previously published .....	Previously published .....	C.	
Creedman Coulee .....	MT .....	Previously published .....	C .....	C.	
Hewitt Lake .....	MT .....	Previously published .....	C .....	C.	
Lake Thibadeau .....	MT .....	Previously published .....	C .....	C.	

A = Refuge was created from existing land that was part of Yazoo NWR Complex, which was already open to all 3 hunting opportunities in 50 CFR.

B = Refuge already listed, added fishing.

C = Refuge opened to activity in past but omitted from 50 CFR due to administrative oversight.

Some refuges that are already open to hunting activities will be modifying

recreational opportunities, which will result in new hunting days (discussed in

the economic analysis section in following pages). A summary of these

modified opportunities on refuges follow: Washita NWR (OK) will increase its hunting season by 9 additional days; Trinity River NWR (TX) will be open to archery hunting; Agassiz NWR (MN) has initiated a youth hunt, opened to archery hunting, and has extended the muzzleloader deer hunting season; Tensas River NWR (LA) will increase the time period for the youth deer hunt and will add a deer hunt for the physically challenged; and Lake Alice NWR (ND) will be allowing the use of motorized boats while hunting waterfowl.

Lands acquired as "waterfowl production areas" under the Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718d(c)), which we generally manage as part of wetland management districts, are open to the hunting of migratory game birds, upland game, big game, and sport fishing subject to the provisions of State law and regulations (see 50 CFR 32.1 and 32.4). We are adding these existing wetland management districts (WMDs) to the list of refuges open for all four activities in 50 CFR part 32 this year: Benton Lake WMD, Bowdoin WMD, Charles M. Russell WMD, Northeast Montana WMD, and Northwest Montana WMD, all in the State of Montana.

We are correcting administrative errors in 50 CFR part 32. We are correctly reflecting hunting opportunities for four refuges in the State of Montana (Black Coulee, Creedman Coulee, Hewitt Lake, and Lake Thibadeau). These refuges were open to all three hunting activities in the 1983 CFR. The publication of a final rule (49 FR 36737, September 19, 1984), which codified the 1984 CFR with administrative technical amendments, resulted in these four refuges being mistakenly dropped from the upland and/or big game hunting lists. We are now correcting those errors for these refuges.

This document codifies in the Code of Federal Regulations all of the Service's hunting and/or sport fishing regulations that are applicable at Refuge System units previously opened to hunting and/or sport fishing. We are doing this to better inform the general public of the regulations at each refuge, to increase understanding and compliance with these regulations, and to make enforcement of these regulations more efficient. In addition to now finding these regulations in 50 CFR part 32, visitors to our refuges will usually find them reiterated in literature distributed by each refuge or posted on signs.

We have cross-referenced a number of existing regulations in 50 CFR parts 26, 27, and 32 to assist hunting and sport

fishing visitors with understanding safety and other legal requirements on refuges. This redundancy is deliberate, with the intention of improving safety and compliance in our hunting and sport fishing programs.

We incorporate these regulations into 50 CFR part 32. Part 32 contains general provisions and refuge-specific regulations for hunting and sport fishing on refuges.

#### **Fish Advisory**

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can find information about current fish consumption advisories on the Internet at: <http://www.epa.gov/ost/fish/>.

#### **Regulatory Planning and Review**

In accordance with the criteria in Executive Order (E.O.) 12866, the Service asserts that this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under E.O. 12866.

a. This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A cost-benefit and full economic analysis is not required. However, a brief assessment follows to clarify the costs and benefits associated with this rule.

The purpose of this rule is to add one refuge to the list of areas open for sport fishing, to correct 50 CFR part 32 reflecting administrative changes, and to make minor changes to the existing regulations in part 32. In many instances, updates to part 32 are clarifying current practices on individual refuges. As such, many of the updates will not impact the status quo of recreational opportunities on refuges. Only those updates that may impact the status quo are addressed in this section.

Sport fishing and hunting are two of the wildlife-dependent uses of national wildlife refuges that Congress recognizes as legitimate and appropriate, and we should facilitate their pursuit, subject to such restrictions or regulations as may be necessary to ensure their compatibility with the purpose(s) of each refuge. Many of the 547 existing national wildlife refuges already have programs which allow sport fishing and hunting. Not all refuges have the necessary resources and landscape that would make sport fishing and hunting opportunities available to the public.

Cape May NWR (State of New Jersey) will be added to the list of areas open for sport fishing. Cape May NWR is the only refuge that will be newly added to the list of areas opened. This addition will result in an increase in the number of fishing days.

We are correcting the following administrative errors in 50 CFR part 32. The publication of a 1984 final rule (49 FR 36737, September 19, 1984), which codified the 1984 CFR with administrative technical amendments, resulted in four refuges (Black Coulee, Creedman Coulee, Hewitt Lake, and Lake Thibadeau NWRs all in the State of Montana) being mistakenly dropped from the upland and/or big game hunting lists. This rule corrects this error reflecting those hunting opportunities. There are no new economic impacts resulting from this correction because recreational activities never ceased at those refuges.

We will establish Holt Collier NWR (State of Mississippi) as a separate refuge. Because it was formerly part of the Yazoo NWR complex and recreational activities will not increase, we expect no new economic impacts to result.

We generally manage lands acquired as "waterfowl production areas" under the Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718d(c)) as part of wetland management districts (WMDs). These WMDs are open to the hunting of migratory game birds, upland game, big game, and sport fishing subject to the provisions of State law and regulations (see 50 CFR 32.1 and 32.4). We are adding these existing WMDs, all in the State of Montana, to the list of refuges open for all four activities in part 32 this year: Benton Lake WMD, Bowdoin WMD, Charles M. Russell WMD, Northeast Montana WMD, and Northwest Montana WMD. We do not expect any change in visitation rates at these wetland management districts because recreationists currently have the option to participate in these activities. Therefore, there are no new economic impacts from the addition of these wetland management districts to the list in 50 CFR part 32.

Some refuges that are already open to hunting activities will be modifying recreational opportunities, which will result in new hunting days. A summary of these modified opportunities follow: Washita NWR (OK) will increase its hunting season by 9 additional days; Trinity River NWR (TX) will be open to archery hunting; Agassiz NWR (MN) has initiated a youth hunt, opened to archery hunting, and has extended the muzzleloader deer hunting season;

Tensas River NWR (LA) will increase the time period for the youth deer hunt and will add a deer hunt for the physically challenged; and Lake Alice NWR (ND) will be allowing the use of motorized boats while hunting waterfowl. The potential impacts of these recreational opportunities are discussed below in the *Benefits Accrued* section.

In some cases, the changes to part 32 will not impact the opportunity to hunt or fish. Instead, these changes will impact the quality of the hunting or sport fishing experience. These impacts are discussed qualitatively below.

#### *Costs Incurred*

Costs incurred by this regulation would be minimal, if any. We expect any law enforcement or other refuge actions related to recreational activities to be included in any usual monitoring

of the refuge. Therefore, we expect any costs to be negligible.

A number of refuges will be requiring the use of nontoxic shot for turkey hunting. Hunters that use toxic shot will be negatively impacted by this requirement because nontoxic shot is more expensive and does not travel the same distance or with the same trajectory as toxic shot. The number of hunters currently using toxic shot is unknown. Therefore, the impact of this requirement is unknown. While this change may negatively impact some hunters, it will not affect the opportunity to hunt on the refuges.

A number of refuges will be requiring personal property (i.e., decoys, blinds, boats, etc.) to be removed from the refuge property at the end of each day. In addition, a few refuges will be prohibiting hunters from entering the refuge until a specified time of day. The

inconveniences caused by these changes may have a negative impact on the hunter's or angler's experience. However, these changes will not affect the opportunity to hunt or fish on the refuges.

#### *Benefits Accrued*

Benefits from this regulation would be derived from the new fishing and hunting days from opening the refuges to these activities. If the refuges establishing or modifying new fishing and hunting programs were a pure addition to the current supply of such activities, there would be an estimated increase of 840 user days of hunting and 500 user days of fishing (Table 2). These new fishing and hunting days would generate: (1) Consumer surplus<sup>1</sup>, and (2) expenditures associated with fishing and hunting on the refuges.

TABLE 2.—ESTIMATED CHANGE IN FISHING AND HUNTING OPPORTUNITIES IN 2008/09

Refuge	Current hunting and/or fishing days (FY04)	Additional fishing days	Additional hunting days	Total additional fishing and hunting days
Agassiz (MN) .....	740	.....	110	110
Cape May (NJ) .....	8,550	500	.....	500
Lake Alice (ND) .....	1,380	.....	600	600
Tensas River (LA) .....	28,850	.....	25	25
Trinity River (TX) .....	3,320	.....	30	30
Washita (OK) .....	28,818	.....	75	75
Total Days Per Year .....	71,658	500	840	1,340

Assuming the new days are a pure addition to the current supply, the additional days would create consumer surplus of \$65,342 annually ([500 days × \$48.92 CS per day] + [840 days × \$48.67 CS per day]) (Table 3). However, the participation trend is flat in fishing

and hunting activities because the number of Americans participating in these activities has been stagnant since 1991. Any increase in the supply of these activities introduced by adding refuges where the activity is available will most likely be offset by other sites

losing participants, especially if the new sites have higher quality fishing and/or hunting opportunities. Therefore, the additional consumer surplus is likely to be smaller.

TABLE 3.—ESTIMATED CHANGE IN ANNUAL CONSUMER SURPLUS FROM ADDITIONAL FISHING AND HUNTING OPPORTUNITIES IN 2008/09 (2005 \$)

	Fishing	Hunting	Total fishing and hunting
Total Additional Days .....	500	840	1,340
Avg. Consumer Surplus per Day <sup>2</sup> .....	\$48.92	\$48.67	.....
Change in Total Consumer Surplus .....	\$24,460	\$40,882	\$65,342

<sup>2</sup> Due to the unavailability of consistent consumer surplus estimates for these various site-specific activities, we use benefit transfer. We use national average consumer surplus estimates for fishing and for hunting for this analysis. The estimates are from: Pam Kaval and John Loomis, "Updated Outdoor Recreation Use Values with Emphasis on National Park Recreation," October 2003.

In addition to benefits derived from consumer surplus, this rule would also have benefits from the recreation-related expenditures. Due to the unavailability

of site-specific expenditure data, we use the national estimates from the 2001 National Survey of Fishing, Hunting, and Wildlife Associated Recreation to

identify expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with

<sup>1</sup> The difference between the total value people receive from the consumption of a particular good and the total amount they pay for the good.

the maximum expected additional participation on the Refuge System yields \$35,248 in fishing-related

expenditures and \$83,604 in hunting-related expenditures (Table 4).

TABLE 4.—ESTIMATION OF THE ADDITIONAL EXPENDITURES WITH MODIFICATION OF ACTIVITIES ON REFUGES AND THE OPENING OF 1 REFUGE TO SPORT FISHING FOR 2008/09

	U.S. total expenditures in 2001	Average expenditures per day	Current refuge expenditures w/o duplication (FY2004)	Possible additional refuge expenditures
<b>Fishing:</b>				
Total Days Spent .....	557 Mil .....	.....	7,045,382	500
Total Expenditures .....	39.3 Bil .....	\$70	\$496,671,534	\$35,248
Trip Related .....	16.2 Bil .....	\$29	\$204,287,312	\$14,498
Food and Lodging .....	6.5 Bil .....	\$12	\$81,974,145	\$5,818
Transportation .....	3.9 Bil .....	\$7	\$49,005,482	\$3,478
Other .....	5.8 Bil .....	\$10	\$73,307,685	\$5,203
<b>Hunting:</b>				
Total Days Spent .....	228 Mil .....	.....	2,378,813	840
Total Expenditures .....	22.7 Bil .....	\$100	\$236,759,998	\$83,604
Trip Related .....	5.8 Bil .....	\$25	\$60,334,509	\$21,305
Food and Lodging .....	2.7 Bil .....	\$12	\$28,142,621	\$9,938
Transportation .....	2.0 Bil .....	\$9	\$20,554,019	\$7,258
Other .....	1.1 Bil .....	\$5	\$11,637,870	\$4,110

By having ripple effects throughout the economy, these direct expenditures are only part of the economic impact of waterfowl hunting. Using a national impact multiplier for hunting activities (2.73) derived from the report “Economic Importance of Hunting in America” and a national impact multiplier for sportfishing activities (2.79) from the report “Sportfishing in America” for the estimated increase in direct expenditures yields a total economic impact of approximately \$327,000 (2005 dollars) (Southwick Associates, Inc., 2003). (Using a local impact multiplier would yield more accurate and smaller results. However, we employed the national impact multiplier due to the difficulty in developing local multipliers for each specific region.)

Since we know that most of the fishing and hunting occurs within 100 miles of a participant's residence, then it is unlikely that most of this spending would be “new” money coming into a local economy. Therefore, this spending would be offset with a decrease in some other sector of the local economy. The net gain to the local economies would be no more than \$327,000, and most likely considerably less. Since 80 percent of the participants travel less than 100 miles to engage in hunting and sport fishing activities, their spending patterns would not add new money into the local economy and, therefore, the real impact would be on the order of \$65,000 annually.

In summary, we estimate that the additional fishing and hunting opportunities would yield

approximately \$65,000 in consumer surplus and \$65,000 in recreation-related expenditures annually. The 10-year quantitative benefit for this rule would be \$653,000 (\$574,000 discounted at 3 percent or \$491,000 discounted at 7 percent).

b. This rule will not create inconsistencies with other agencies' actions. This action pertains solely to the management of the Refuge System. The sport fishing and hunting activities located on national wildlife refuges account for approximately 1 percent of the available supply in the United States. Any small, incremental change in the supply of sport fishing and hunting opportunities will not measurably impact any other agency's existing programs.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule does not affect entitlement programs. There are no grants or other Federal assistance programs associated with public use of national wildlife refuges.

d. This rule will not raise novel legal or policy issues. This rule makes minor changes to existing regulations in 50 CFR part 32 and corrects some administrative errors. This rule continues the practice of allowing recreational public use of national wildlife refuges. Many refuges in the Refuge System currently have opportunities for the public to hunt and fish on refuge lands.

#### Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business

Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601, *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for “significant impact” and a threshold for a “substantial number of small entities.” See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

This rule establishes a fishing program on one refuge and modifies recreational opportunities at several other refuges. As a result, opportunities for wildlife-dependent recreation on national wildlife refuges will increase. The changes in the amount of allowed use(s) are likely to increase visitor activity on these national wildlife refuges. However, as stated in the *Regulatory Planning and Review* section, this is likely to be a substitute site for the activity and not necessarily an increase in participation rates for the

activity. To the extent visitors spend time and money in the area of the refuge that they would not have spent there anyway, they contribute new income to the regional economy and benefit local businesses.

Many small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait and tackle shops, etc.) may benefit from

some increased refuge visitation. A large percentage of these retail trade establishments in the majority of affected counties qualify as small businesses (Table 5).

We expect that the incremental recreational opportunities will be scattered, and so we do not expect that the rule will have a significant economic effect (benefit) on a

substantial number of small entities in any region or nationally. Using the estimate derived in the *Regulatory Planning and Review* section, we expect approximately \$65,000 to be spent in total in the refuges' local economies. The maximum increase (\$327,000 if all spending were new money) at most would be less than 1 percent for local retail trade spending (Table 5).

TABLE 5.—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2008/2009 (THOUSANDS, 2005 DOLLARS)

Refuge/county(ies)	Retail trade in 2002	Estimated maximum addition from new activities	Addition as a percent of total	Total number retail establish.	Establish. with 10 emp.
Agassiz:					
Marshall, MN .....	\$77,841	\$5	0.007	43	35
Cape May:					
Cape May, NJ .....	1,501,452	25	0.002	776	633
Lake Alice:					
Ramsey, ND .....	211,203	15	0.007	98	69
Towner, ND .....	10,819	15	0.135	15	14
Tensas River:					
Franklin, LA .....	199,210	0	0.0002	83	63
Madison, LA .....	75,763	0	0.001	42	31
Tensas, LA .....	23,183	0	0.002	26	22
Trinity River:					
Liberty, TX .....	686,415	2	0.0002	204	155
Washita:					
Custer, OK .....	324,161	4	0.001	161	120

With the small increase in overall spending anticipated from this rule, it is unlikely that a substantial number of small entities will have more than a small benefit from the increased spending near the affected refuges. Therefore, we certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

#### Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This rule:

a. Will not have an annual effect on the economy of \$100 million or more. The additional fishing and hunting opportunities at these refuges would generate angler and hunter expenditures with an economic impact estimated at \$327,000 per year (2005 dollars). Consequently, the maximum benefit of this rule for businesses both small and large would not be sufficient to make

this a major rule. The impact would be scattered across the country and would most likely not be significant in any local area.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule would have only a slight effect on the costs of hunting and sport fishing opportunities for Americans. Under the assumption that any additional hunting and sport fishing opportunities would be of high quality, participants would be attracted to the refuge. If the refuge were closer to the participants' residences, then a reduction in travel costs would occur and benefit the participants. The Service does not have information to quantify this reduction in travel cost but assumes that, since most people travel less than 100 miles to hunt and fish, the reduced travel cost would be small for the additional days of hunting and sport fishing generated by this rule. We do not expect this rule to affect the supply or demand for sport fishing and hunting opportunities in the United States and, therefore, it should not affect prices for sport fishing and hunting equipment and supplies, or the retailers that sell equipment. Additional refuge hunting and sport fishing opportunities would

account for less than 0.001 percent of the available opportunities in the United States.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. This rule represents only a small proportion of recreational spending of a small number of affected anglers and hunters, approximately a maximum of \$327,000 annually in impact. Therefore, this rule would have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of \$72 billion nationally. Refuges that establish hunting and sport fishing programs may hire additional staff from the local community to assist with the programs, but this would not be a significant increase because we are opening only one refuge to sport fishing and modifying opportunities at several other refuges.

#### Unfunded Mandates Reform Act

Since this rule would apply to public use of federally owned and managed refuges, it would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The

rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

#### **Takings (E.O. 12630)**

In accordance with E.O. 12630, this rule would not have significant takings implications. This regulation would affect only visitors at national wildlife refuges and describe what they can do while they are on a refuge.

#### **Federalism (E.O. 13132)**

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this rule would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment under E.O. 13132. In preparing this rule, we worked with State governments.

#### **Civil Justice Reform (E.O. 12988)**

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation would clarify established regulations and result in better understanding of the regulations by refuge visitors.

#### **Energy Supply, Distribution, or Use (E.O. 13211)**

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule would add one refuge to the list of areas open for sport fishing and modify activities at several other refuges, it is not a significant regulatory action under E.O. 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

#### **Consultation and Coordination With Indian Tribal Governments (E.O. 13175)**

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on national wildlife refuges with Tribal governments having adjoining or overlapping jurisdiction before we propose the regulations.

#### **Paperwork Reduction Act**

The Office of Management and Budget has approved our collection of information associated with special use permits used by refuges outside of Alaska and assigned OMB Control Number is 1018-0102. See 50 CFR 25.23 for information concerning that approval. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We will seek further OMB approval for other necessary information collection.

#### **Endangered Species Act Section 7 Consultation**

In preparation for new openings, we comply with Section 7 of the Endangered Species Act. Copies of the Section 7 evaluations may be obtained by contacting the regions listed under *Available Information for Specific Refuges*. For the proposal to open Cape May National Wildlife Refuge, we have determined the actions will have no effect on any listed species or critical habitat.

We also comply with Section 7 of the ESA when developing Comprehensive Conservation Plans (CCPs) and step-down management plans for public use of refuges, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32.

#### **National Environmental Policy Act**

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and 516 Departmental Manual (DM) 6, Appendix 1. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required.

Concerning the action that is the subject of this rulemaking (opening Cape May National Wildlife Refuge in New Jersey to fishing), NEPA was complied with at the project level where this proposal was developed.

Prior to the addition of a refuge to the list of areas open to sport fishing in 50 CFR part 32, we developed a fishing plan for the affected refuge. We incorporate this proposed refuge fishing activity in the refuge CCPs and/or other step-down management plans, pursuant to our refuge planning guidance in 602 Fish and Wildlife Service Manual (FW) 1, 3, and 4. We prepared CCPs and step-down plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for

implementing NEPA in 40 CFR parts 1500-1508. We invite the affected public to participate in the review, development, and implementation of these plans. Copies of all plans and NEPA compliance are available from the refuge at the addresses provided below. The modifications of existing public use hunting and fishing programs are all minor in nature and fall within the relevant NEPA compliance prepared for the programs initially and also would fall within the category of minor modifications excluded from further NEPA consideration described in 516 DM 6, Appendix 1, 1.4A (1, 7, and 9).

#### **Available Information for Specific Refuges**

Individual refuge headquarters retain information regarding public use programs and conditions that apply to their specific programs and maps of their respective areas. If the specific refuge you are interested in is not mentioned below, then contact the appropriate Regional offices listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, OR 97232-4181; Telephone (503) 231-6214.

Region 2—Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Box 1306, 500 Gold Avenue, Albuquerque, NM 87103; Telephone (505) 248-7419.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1 Federal Drive, Federal Building, Fort Snelling, Twin Cities, MN 55111; Telephone (612) 713-5401.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345; Telephone (404) 679-7166. Holt Collier National Wildlife Refuge, 728 Yazoo Refuge Road, Hollandale, MI 38748; Telephone (662) 839-2638.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center

Drive, Hadley, MA 01035-9589; Telephone (413) 253-8306. Cape May National Wildlife Refuge, 24 Kimbles Beach Road, Cape May Court House, NJ 08210; Telephone (609) 463-0994.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, CO 80228; Telephone (303) 236-8145.

Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, AK 99503; Telephone (907) 786-3545.

#### Primary Author

Leslie A. Marler, Management Analyst, Division of Conservation Planning and Policy, National Wildlife Refuge System, is the primary author of this rulemaking document.

#### List of Subjects in 50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

■ For the reasons set forth in the preamble, we amend title 50, Chapter I, subchapter C of the Code of Federal Regulations as follows:

#### PART 32—[AMENDED]

■ 1. The authority citation for part 32 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd-668ee, and 715i.

■ 2. Amend § 32.7, “What refuge units are open to hunting and/or sport fishing?”, by:

■ a. Adding Holt Collier National Wildlife Refuge in alphabetical order in the State of Mississippi;

■ b. Adding Benton Lake Wetland Management District, Bowdoin Wetland Management District, Charles M. Russell Wetland Management District, Northeast Montana Wetland Management District, and Northwest Montana Wetland Management District in alphabetical order in the State of Montana; and

■ c. Removing ACE Basin National Wildlife Refuge and adding Ernest F. Hollings ACE Basin National Wildlife Refuge in the State of South Carolina in alphabetical order.

■ 3. Amend § 32.20 Alabama by:

■ a. Revising paragraph C.2. of Cahaba River National Wildlife Refuge;

■ b. Revising paragraph B.7. of Choctaw National Wildlife Refuge; and

■ c. Revising paragraphs B.5. and C.4. of Eufaula National Wildlife Refuge to read as follows:

#### § 32.20 Alabama.

\* \* \* \* \*

#### Cahaba River National Wildlife Refuge

\* \* \* \* \*

##### C. Big Game Hunting. \* \* \*

\* \* \* \* \*

2. We prohibit the use of firearms for hunting deer on the refuge. However, you may archery hunt in the portions of the refuge that are open for deer hunting during the archery, shotgun, and muzzleloader seasons established by the State.

\* \* \* \* \*

#### Choctaw National Wildlife Refuge

\* \* \* \* \*

##### B. Upland Game Hunting. \* \* \*

\* \* \* \* \*

7. We prohibit the mooring and storing of boats from legal sunset to legal sunrise.

\* \* \* \* \*

#### Eufaula National Wildlife Refuge

\* \* \* \* \*

##### B. Upland Game Hunting. \* \* \*

\* \* \* \* \*

5. We prohibit the mooring and storing of boats from 1½ hours after legal sunset to 1½ hours before legal sunrise.

##### C. Big Game Hunting. \* \* \*

\* \* \* \* \*

4. All youth hunters age 15 and under must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. We allow youth gun deer hunting (ages 10-15) within the Bradley Unit on weekends during October where an adult must supervise youth age 15 or under. One adult may supervise no more than one youth hunter.

\* \* \* \* \*

■ 4. Amend § 32.22 Arizona by:

■ a. Revising paragraphs A.1. through A.3., B., and C.2. of Buenos Aires National Wildlife Refuge; and

■ b. Revising paragraph A.11.viii. and adding paragraphs A.13. and A.14. of Havasu National Wildlife Refuge;

#### § 32.22 Arizona.

\* \* \* \* \*

#### Buenos Aires National Wildlife Refuge

##### A. Migratory Game Bird Hunting.

\* \* \*

1. We allow portable or temporary blinds and stands, but you must remove them at the end of each hunt day.

2. We prohibit the use of flagging tape, reflective tape, or other signs or markers used to identify paths or to mark tree stands, blinds, or other areas.

3. The No-Hunt Zones include all Service property east of milepost 7 of Arivaca Road within the Arivaca Creek Management Area, all Service property in Brown Canyon, all Service property within ¼ mile (.4 km) of refuge residences, and the posted No-Hunt Zone encompassing refuge headquarters and area bounded by the 10-mile (16 km) Pronghorn Drive auto tour loop.

B. Upland Game Hunting. We allow hunting of cottontail rabbit, coyote, and skunk on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A3 apply.

2. We require hunting groups using more than four horses to possess and carry a refuge special use permit.

3. We require each hunter using horses to provide water and feed and clear all horse manure from campsites.

4. We prohibit upland game hunting on the refuge from June 1 through August 19.

##### C. Big Game Hunting. \* \* \*

\* \* \* \* \*

2. Conditions A1 through A3, B2, and B3 apply.

\* \* \* \* \*

#### Havasu National Wildlife Refuge

##### A. Migratory Game Bird Hunting.

\* \* \*

\* \* \* \* \*

11. \* \* \*

\* \* \* \* \*

viii. We allow waterfowl hunting on Wednesdays, Saturdays, and Sundays. Waterfowl hunting ends at 12:00 p.m. (noon) MST. Hunters must be out of the slough area by 1:00 p.m. MST.

\* \* \* \* \*

13. We prohibit the use of all air-thrust boats and/or air-cooled propulsion engines, including floating aircraft.

14. Hunting dogs must be under the immediate control of the hunter at all times.

\* \* \* \* \*

■ 5. Amend § 32.23 Arkansas by:

■ a. Revising paragraphs B.6., B.12., adding paragraphs B.13., and B.14., revising paragraph C. and the introductory text of paragraph D., and revising paragraphs D.1., D.7., D.8., D.9., D.10., and adding paragraphs D.11. through D.14. of Holla Bend National Wildlife Refuge; and

■ b. Revising paragraphs A.2., A.6., A.8., A.10., A.15., C.7., C.8., C.12., and C.16. of White River National Wildlife Refuge to read as follows:

#### § 32.23 Arkansas.

\* \* \* \* \*



**Holla Bend National Wildlife Refuge**

\* \* \* \* \*

*B. Upland Game Hunting.* \* \* \*

\* \* \* \* \*

6. We prohibit possession or use of alcoholic beverage(s) while hunting (see § 32.2(j)).

\* \* \* \* \*

12. We prohibit hunting within 150 feet (45 m) of roads and trails open to motor vehicle use.

13. We prohibit marking trails with tape, ribbon, paint, or any other substance other than biodegradable materials.

14. We allow the use of nonmotorized boats during the hunting season, but we prohibit hunters leaving boats on the refuge overnight (see § 27.93 of this chapter).

*C. Big Game Hunting.* We allow hunting of deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B1 and B4 through B14 apply.

2. Archery/crossbow season for deer and turkey begins October 1 and continues through December 10.

3. The refuge will conduct one youth-only (between ages 12–15 at the beginning of the gun deer season in Zone 7) quota deer hunt. This hunt will take place after the archery season (typically in December). Specific hunt dates and application procedures will be available at the refuge office in September. We restrict hunt participants to those selected for a quota permit, except that one nonhunting adult age 21 or older must accompany the youth hunter during the youth hunt.

4. We open spring and fall archery turkey hunting during the State spring and fall turkey season for this zone.

5. We close spring archery turkey hunting during scheduled turkey quota gun hunts.

6. The refuge will conduct one 2-day youth-only (age 15 and under at the beginning of the spring turkey season) quota spring turkey hunt and one 2-day quota spring turkey hunt (typically in April). Specific hunt dates and application procedures will be available at the refuge office in January. We restrict hunt participants to those selected for a quota permit, except that one nonhunting adult age 21 or older must accompany the youth hunter during the youth hunt.

7. An adult age 21 or older must accompany and be within sight or normal voice contact of hunters age 15 and under. One adult may supervise no more than one youth hunter.

8. We allow only portable deer stands. Hunters may erect stands 2 days before

the start of the season and must remove the stands from the refuge within 2 days after the season ends (see §§ 27.93 and 27.94 of this chapter).

9. Hunters must permanently affix the owner's name and address to all deer stands on the refuge.

10. We prohibit the use of dogs during big game hunting.

11. We prohibit hunting from paved, graveled, and mowed roads and mowed trails (see § 27.31 of this chapter).

12. We prohibit hunting with the aid of bait, salt, or ingestible attractant (see § 32.2(h)).

13. We prohibit all forms of organized drives.

14. You must check all game at the refuge check station.

*D. Sport Fishing.* We allow sport fishing and frogging in accordance with State regulations subject to the following conditions:

1. Conditions B7, B8, and B10 apply.

\* \* \* \* \*

7. We will allow only bank fishing in Long Lake year-round from legal sunrise to legal sunset. Access to this bank fishing area is through the parking area off of Hwy 155.

8. We allow only bow fishing from legal sunrise to legal sunset during August.

9. We allow frogging from May 1 to May 31. We allow only frogging on those areas of the old river channel that connect with the Arkansas River.

10. Anglers must enter and exit the refuge from designated roads and parking areas.

11. We prohibit anglers from leaving their boats unattended overnight on any portion of the refuge (see § 27.93 of this chapter).

12. We require a Special Use Permit for all commercial fishing activities on the refuge.

13. We prohibit possessing turtle (see § 27.21 of this chapter).

14. We prohibit hovercraft, personal watercraft (Jet Skis, etc.), and airboats.

\* \* \* \* \*

**White River National Wildlife Refuge***A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

2. We allow duck hunting from legal shooting hours until 12 p.m. (noon).

\* \* \* \* \*

6. You may take coot and woodcock during the State season.

\* \* \* \* \*

8. Waterfowl hunters may enter and access the refuge no earlier than 4:30 a.m.

\* \* \* \* \*

10. We prohibit boating December 1 through January 31 in the South Unit

Waterfowl Hunt Area, except from 4:30 a.m. to 1:00 p.m. on designated hunt days.

\* \* \* \* \*

15. We prohibit loaded weapons in a vehicle or boat while under power (see § 27.42(b) of this chapter). We define "loaded" as shells in the gun or ignition device on a muzzleloader.

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

7. You may hunt the North or South Unit by muzzleloader or modern gun with a quota hunt permit. You may take only one deer of either sex. We list the season in the refuge hunt brochure/permit.

8. We allow muzzleloader hunting on the North Unit for 4 consecutive days following the 3-day muzzleloader quota hunt.

\* \* \* \* \*

12. If you harvest deer and turkey on the refuge, you must immediately record the zone number on your hunting license and later at an official check station.

\* \* \* \* \*

16. We allow access and refuge use during quota hunt to anglers and nonconsumptive users.

\* \* \* \* \*

■ 6. Amend § 32.28 Florida by:  
 ■ a. Revising paragraphs A.1., A.2., A.3., A.11., A.13., A.14., A.15., and adding paragraphs A.16. and A.17., revising paragraphs D.8., D.9., and removing paragraph D.10. of Arthur R. Marshall Loxahatchee National Wildlife Refuge;  
 ■ b. Revising paragraphs D.2., D.4., D.5., and adding paragraphs D.6., D.7., and D.8. of Hobe Sound National Wildlife Refuge;  
 ■ c. Revising paragraphs D.4. through D.14. and adding paragraphs D.15. through D.20. of J.N. "Ding" Darling National Wildlife Refuge;  
 ■ d. Revising paragraphs A.7. and A.10., adding paragraph A.16., revising paragraphs B.1., B.2., B.3., C.1., C.7., and C.23., removing paragraph C.24., and redesignating paragraphs C.25. and C.26. as paragraphs C.24. and C.25. of Lower Suwannee National Wildlife Refuge;  
 ■ e. Revising paragraphs A., D.2., D.3., D.9., and D.11. of Merritt Island National Wildlife Refuge;  
 ■ f. Revising paragraphs B.3. through B.9., revising the introductory text of paragraph C., removing paragraph C.3. and redesignating paragraphs C.4. through C.13. as paragraphs C.3. through C.12., and revising newly designated paragraphs C.6. through C.9., and C.11. of St. Marks National Wildlife Refuge; and

■ g. Revising paragraphs C., D.6., and D.7. and removing paragraphs D.8. and D.9. of St. Vincent National Wildlife Refuge to read as follows:

**§ 32.28 Florida.**

\* \* \* \* \*

**Arthur R. Marshall Loxahatchee National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

1. You must possess and carry a signed refuge waterfowl hunt permit while hunting. Only original permits are lawful. Internet copies are not valid.

2. We allow hunting in the interior of the refuge south of latitude line 26.27.130 and north of mile markers 12 and 14. We prohibit hunting from canals, levees, or those areas posted as closed.

3. The refuge open waterfowl season is concurrent with the State season. The refuge participates in both the early experimental and regular seasons. Hunters may take only duck and coot.

\* \* \* \* \*

11. Hunters must complete a daily bag report card and place it in an entrance fee canister each day prior to exiting the refuge.

\* \* \* \* \*

13. We allow boats equipped only with outboards or electric motors and nonmotorized boats. We prohibit airboats, Hovercraft, and personal watercraft (Go Devils, Jet Skis, jet boats, and Wave Runners).

14. We require all boats operating outside of the main perimeter canals (the L-40 Canal, L-39 Canal, L-7 Canal, and L-101 Canal) in interior areas of the refuge and within the hunt area, to fly a 12 inch by 12 inch (30 cm x 30 cm) orange flag, 10 feet (3 m) above the vessel's waterline.

15. We prohibit motorized vehicles of any type on the levees and undesignated routes (see § 27.31 of this chapter).

16. Hunters, their vehicles, boats, equipment, and other belongings are subject to inspection by Service law enforcement officers.

17. For emergencies or to report violations, contact law enforcement personnel at 1-800-307-5789. Law enforcement officers may be monitoring VHF Channel 16.

\* \* \* \* \*

*D. Sport Fishing.*

\* \* \* \* \*

8. Conditions A13, A14, A15, and A17 apply.

9. Anglers, their vehicles, boats, equipment, and other belongings are subject to inspection by Service law enforcement officers.

\* \* \* \* \*

**Hobe Sound National Wildlife Refuge**

*D. Sport Fishing.*

\* \* \* \* \*

2. We allow salt-water fishing along the Atlantic Ocean and Indian River Lagoon year-round in accordance with State recreational fishing regulations.

\* \* \* \* \*

4. We allow the use of only rods and reels and poles and lines, and anglers must attend them at all times.

5. We allow only two poles per angler and those poles must be attended at all times (In conjunction with the Martin County, Florida two-pole ordinance.)

6. We prohibit motorized vehicles of any type on the fire roads, undesignated routes, and areas posted as closed (see § 27.31 of this chapter).

7. Anglers, their vehicles, boats, equipment, and other belongings are subject to inspection by Service law enforcement officers.

8. For emergencies or to report violations, contact law enforcement personnel at 1-800-307-5789. Law enforcement officers may be monitoring VHF Channel 16.

**J.N. "Ding" Darling National Wildlife Refuge**

\* \* \* \* \*

*D. Sport Fishing.*

\* \* \* \* \*

4. We allow the take of blue crab with the use of dip nets only.

5. The daily limit of blue crab is 20 per person (including no more than 10 females).

6. We prohibit kite surfing, kite boarding, wind surfing, sail boarding, and any similar type of activities.

7. We allow vessels propelled only by polling, paddling, or floating in the post "no-motor zone" of the Ding Darling Wilderness Area. All motors, including electric motors, must be in a nonuse position (out of the water) when in the "no-motor zone."

8. We prohibit camping on all refuge lands and overnight mooring of vessels on all refuge waters.

9. You may only launch vessels at designated sites on the refuge.

10. We allow public access to Wildlife Drive and Indigo Trail beginning at 7:30 a.m., except on Fridays, when we close Wildlife Drive to all public access.

11. All visitors (e.g., anglers and photographers) must exit refuge lands and waters no later than ½ hour after legal sunset.

12. We allow fishing and crabbing from the bank on the impoundment side only (left side) of Wildlife Drive. We prohibit all public entry into the impoundments.

13. We prohibit commercial fishing and crabbing (see § 27.21 of this chapter).

14. We prohibit the possession or use of seines or trot lines.

15. We prohibit the use of cast nets from Wildlife Drive or any structure affixed to shore.

16. All fish must remain in whole condition.

17. We prohibit consumption of alcohol or possession of open alcohol containers on refuge lands and waters (see § 32.2(j)).

18. We prohibit airboats, Hovercraft, and personal watercraft (Go Devils, Jet Skis, jet boats, and Wave Runners).

19. Vessels must not exceed slow speed/minimum wake in refuge waters.

20. We close to public entry islands (including rookery islands) except for designated trails.

\* \* \* \* \*

**Lower Suwannee National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \* \* \*

7. We prohibit hunting from all refuge roads open to public vehicle travel. We prohibit hunting within 150 feet (45 m) of the Dixie Mainline and Lower Suwannee Nature Drive (Levy Loop Road).

\* \* \* \* \*

10. We prohibit guiding or participating in a guided hunt where a fee is charged.

\* \* \* \* \*

16. We prohibit cleaning of game within 1,000 feet (300 m) of any developed public recreation area, game check station, or gate.

*B. Upland Game Hunting.*

\* \* \*

1. Conditions A1 through A16 apply.

2. You may possess only .22 caliber rimfire rifle (.22 magnum prohibited) firearms (see § 27.42 of this chapter) shotguns with shot no larger than 4 common and bows with arrows that have judo or blunt tips. We prohibit possession of arrows capable of taking big game during the upland game hunting season.

3. We allow night hunting in accordance with State regulations for raccoon and opossum on Wednesday through Saturday nights from legal sunset until legal sunrise during the month of February.

\* \* \* \* \*

*C. Big Game Hunting.*

\* \* \*

1. Conditions A1 through A16 apply.

\* \* \* \* \*

7. We prohibit hunting from a tree in which a metal object has been inserted (see § 32.2(i)).

23. You may take only bearded turkeys and only during the State spring turkey season.

#### Merritt Island National Wildlife Refuge

*A. Migratory Game Bird Hunting.* We allow hunting of duck and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a current signed Merritt Island National Wildlife Refuge hunt permit at all times while hunting waterfowl on the refuge.

2. You must possess and carry (or hunt within 30 yards (27 m) of a hunter who possesses) a valid refuge waterfowl hunting quota permit while hunting areas 1 or 4 from the beginning of the regular waterfowl season through December 31. No more than four hunters will hunt using a single valid refuge waterfowl hunting quota permit.

3. You may hunt Wednesdays, Saturdays, Sundays, and all Federal holidays that fall within the State's waterfowl season.

4. You may hunt in four designated areas of the refuge as delineated in the refuge hunting regulations map. We prohibit hunters to enter the normal or expanded restricted areas of the Kennedy Space Center.

5. You may hunt only waterfowl on refuge-established hunt days from the legal shooting time until 1 p.m.

6. You may enter no earlier than 4 a.m. for the purpose of waterfowl hunting.

7. We require all hunters to successfully complete a State-approved hunter education course.

8. We require an adult, age 18 or older, to supervise hunters under age 18.

9. We prohibit accessing a hunt area from Black Point Wildlife Drive. You may not leave vehicles parked on Black Point Wildlife Drive, Playalinda Beach Road, or Scrub Ridge Trail (see § 27.31 of this chapter).

10. We prohibit construction of permanent blinds (see § 27.92 of this chapter) or digging into dikes.

11. We prohibit hunting or shooting within 15 feet (4.5 m) or shooting from any portion of a dike, dirt road, or railroad grade.

12. We prohibit hunting or shooting within 150 yards (135 m) of SR 402, SR 406, or any paved road right-of-way.

13. All hunters must stop at posted refuge waterfowl check stations and

report statistical hunt information to refuge personnel.

#### *D. Sport Fishing.*

2. We prohibit fishing after legal sunset or before legal sunrise, except that we allow fishing at night from a vessel in the open waters of Mosquito Lagoon, Indian River Lagoon, Banana River, and Haulover Canal.

3. We allow launching of boats for night fishing activities only from Bair's Cove, Beacon 42, and Bio Lab boat ramps.

9. Vessels must not exceed idle speed in Bairs Cove and KARS Marina.

11. We prohibit fishing within the normal or expanded restricted areas of the Kennedy Space Center (KSC), unless those areas are officially designated by KSC as special fishing opportunity sites.

#### St. Marks National Wildlife Refuge

##### *B. Upland Game Hunting.*

3. You may use .22 caliber or smaller rim-fired rifles, shotguns with nontoxic shot (#4 bird shot or smaller) (see § 32.2(k)), or muzzleloaders to harvest squirrel, rabbit, and raccoon. In addition, you may use shotgun slugs, buckshot, or archery equipment to take feral hogs. We prohibit the use or possession of other weapons.

4. You must unload all firearms for transport in vehicles (uncap muzzleloaders) (see § 27.42 of this chapter).

5. We prohibit dogs in the hunt area.

6. There is no limit on the size or number of feral hog that hunters may take.

7. We allow hunting on designated areas of the refuge. Contact the refuge office for specific dates.

8. We prohibit hunting from any named or numbered road (with the exception of persons hunting during the mobility impaired hunt).

9. We prohibit cleaning of game within 1,000 feet (300 m) of any residence, developed public recreation area, or game check station.

*C. Big Game Hunting.* We allow hunting of white-tailed deer, feral hog, and bearded turkey in accordance with State regulations subject to the following conditions:

6. We prohibit the use of flagging, paint, blazes, or reflective trail markers.

7. There are two fall archery hunts: Hunters may harvest either-sex deer or

feral hog during the fall archery hunts. There will be a fall archery hunt on the Panacea and Wakulla Units. We prohibit other weapons in the hunt area (see § 27.43 of this chapter). Contact the refuge office for specific dates.

8. There are two modern gun hunts. Hunters may harvest deer and feral hog. Modern guns must meet State requirements. We will hold one hunt on the Panacea Unit and one on the Wakulla Unit. See condition C10 for game limits. Contact the refuge office for specific dates.

9. The bag limit for white-tailed deer is two deer per scheduled hunt period. We allow hunters to harvest two antlerless deer per scheduled hunt period. We define antlerless deer as no visible antler above the hairline. State daily bag limits apply to antlerless deer. Or hunters may harvest one antlerless deer and one antlered deer per hunt. Antlered deer must have at least 3 points, 1 inch (2.5 cm) or greater in length on one antler to be harvested. There is no limit on feral hogs. The scheduled hunt periods vary; contact the refuge office for specific dates.

11. There is one mobility-impaired hunt. Hunters may have an able-bodied hunter accompany them. You may transfer permits issued to able-bodied assistants. We limit those hunt teams to harvesting white-tailed deer and feral hog within the limits described in condition C10. Contact the refuge office for specific dates.

#### St. Vincent National Wildlife Refuge

*C. Big Game Hunting.* We allow hunting of white-tailed deer, sambar deer, raccoon, and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require refuge permits. The permits are nontransferable, and the hunter must possess and carry them while hunting. Only signed permits are valid. We allow people only with a signed refuge hunt permit on the island during the hunt periods. Contact the refuge office for details on obtaining a permit. We will charge fees for the hunts.

2. We restrict hunting to three hunting periods: Sambar deer, raccoon, and feral hog (primitive weapons); white-tailed deer, raccoon, and feral hog (archery); and white-tailed deer, raccoon, and feral hog (primitive weapons). Contact the refuge office for specific dates. Hunters may check in and set up campsites and stands 1 day prior to the scheduled

hunt. Hunters must leave the island and remove all equipment by 4 p.m. the last day of the scheduled hunt.

3. Hunters must check in at the check stations on the island. We restrict entry onto St. Vincent Island to the Indian Pass and West Pass Campsites. We restrict entry during the sambar deer hunt to the West Pass Campsite. All access to hunt areas will be on foot or by bicycle from these areas.

4. Hunt hours are ½ hour before legal sunrise until 3 p.m. for the sambar deer hunt. All other hunt times will be in accordance with State regulations.

5. We restrict camping and fires (see § 27.95(a) of this chapter) to the two designated camping areas. We may restrict or ban fires during dry periods.

6. We prohibit the use or possession of alcoholic beverages during the refuge hunt period (see § 32.2(j)).

7. You may set up tree stands only after you check in, and you must remove them from the island at the end of the hunt (see §§ 27.93 and 27.94 of this chapter).

8. You may retrieve game from the closed areas only if accompanied by a refuge officer.

9. We issue permits for the sambar deer hunt by random drawing. You may obtain applications from the refuge office.

10. We limit weapons to primitive weapons on the sambar deer hunt and the primitive weapons white-tailed deer hunt. We limit the archery hunt to bow and arrow. Weapons must meet all State regulations. We prohibit crossbows during our hunts except with State permit.

11. We allow only stand, still, and stalk hunting. We prohibit game drives.

12. We prohibit the use of flagging, paint, blazes, or reflective trail markers.

13. We prohibit target practice on the refuge (see § 27.42 of this chapter). You may discharge muzzleloaders at the designated discharge area between 5 a.m. and 9 p.m.

14. Nonmovement stand hours for all hunts will be from legal morning shooting time until 9 a.m.

15. We prohibit discharging of weapons (including cap firing) in campgrounds (see § 27.42 of this chapter).

16. Weapons must have the caps removed from muzzleloaders and arrows quivered before and after legal shooting hours.

17. Hunters must check out at the check station prior to leaving the refuge at the end of their hunt. A refuge staff member or volunteer must check the campsites before the hunters leave the refuge.

18. We prohibit motorized equipment, generators, or land vehicles (except bicycles).

19. Bag limits:

i. Sambar deer hunt—one sambar deer of either sex, no limit on feral hog or raccoon.

ii. Archery hunt—one white-tailed deer of either sex (no spotted fawns or spike bucks), no limits on feral hog or raccoon.

iii. Primitive weapons hunt—one white-tailed deer buck having one or more forked antlers at least 5 inches (12.5 cm) in length visible above the hairline with points greater than 1 inch (2.5 cm) in length; we issue a limited number of either-sex permits. If you have an either-sex permit, the bag limit is one deer that may be antlerless or a buck legal antler configuration. There is no limit on feral hog or raccoon.

20. We prohibit bringing live game into the check station.

21. Hunters must observe quiet time in the campground between 9 p.m. and 5 a.m. We prohibit loud or boisterous behavior or activity.

22. We prohibit domestic animals.

*D. Sport Fishing.* \* \* \*

\* \* \* \* \*

6. We allow only the use of rods and reels or poles and lines in the refuge lakes. You must attend your fishing equipment at all times.

7. You may take only fish species and fish limits authorized by State regulations. We prohibit the taking of frog or turtle.

\* \* \* \* \*

■ 7. Amend § 32.29 Georgia by:

■ a. Revising paragraph D.4. of Banks Lake National Wildlife Refuge;

■ b. Adding paragraph C.22. of Bond Swamp National Wildlife Refuge;

■ c. Revising paragraphs C.2., C.9., and D.3. of Harris Neck National Wildlife Refuge;

■ d. Revising paragraph C.2.v. of Okefenokee National Wildlife Refuge;

■ e. Adding paragraph C.18. of Piedmont National Wildlife Refuge;

■ f. Revising paragraphs C.3., C.5., redesignating paragraphs C.6. through C.10. as paragraphs C.7. through C.11. and adding a new paragraph C.6. of Savannah National Wildlife Refuge; and

■ g. Revising paragraphs C.8. and C.9. of Wassaw National Wildlife Refuge to read as follows:

**§ 32.29 Georgia.**

\* \* \* \* \*

#### **Banks Lake National Wildlife Refuge**

\* \* \* \* \*

*D. Sport Fishing.* \* \* \*

\* \* \* \* \*

4. We prohibit swimming, wading, jet skiing, water skiing, and the use of airboats.

\* \* \* \* \*

#### **Bond Swamp National Wildlife Refuge**

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

22. Youth hunters age 15 and under must remain within sight and normal voice contact of an adult age 21 or older possessing a valid hunting license. One adult may supervise no more than one youth hunter.

\* \* \* \* \*

#### **Harris Neck National Wildlife Refuge**

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

2. Each hunter may place one stand on the refuge during the week preceding each hunt, but you must remove stands by the end of each hunt (see §§ 27.93 and 27.94 of this chapter).

\* \* \* \* \*

9. During the archery hunt we allow only bows (no crossbows).

\* \* \* \* \*

*D. Sport Fishing.* \* \* \*

\* \* \* \* \*

3. We close the Barbour River Landing (boat ramp and parking areas) to the public from 12 a.m. (midnight) to 4 a.m.

#### **Okefenokee National Wildlife Refuge**

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

2. \* \* \*

\* \* \* \* \*

v. You must tag your deer with special refuge tags. There is a limit of two deer of either sex per day.

\* \* \* \* \*

#### **Piedmont National Wildlife Refuge**

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

18. Youth hunters age 15 and under must remain within sight and normal voice contact of an adult age 21 or older possessing a valid hunting license. One adult may supervise no more than one youth hunter.

\* \* \* \* \*

#### **Savannah National Wildlife Refuge**

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

3. We allow only bows (no crossbows) for deer and hog hunting during the archery hunt.

\* \* \* \* \*

5. We allow only shotguns with slugs, muzzleloaders, and bows (no crossbows) for deer and hog hunting throughout the designated hunt area during the November gun hunt and the March hog hunt. However, we allow high-powered rifles north of Interstate Highway 95 only. We prohibit handguns.

6. You may place one stand on the refuge for 2 consecutive days during the October archery hunt, the November gun hunt, and the March hog hunt. You must remove your stand by legal sunset of the second day of each 2-day period. Your name, address, and phone number must be marked on your stand.

\* \* \* \* \*

#### Wassaw National Wildlife Refuge

\* \* \* \* \*

##### *C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

8. We allow bows (no crossbows) and muzzleloading rifles during the primitive weapons hunt.

9. We allow shotguns, 20 gauge or larger (slugs only), centerfire rifles of .22 caliber or larger, bows (no crossbows), and primitive weapons during the gun hunt.

\* \* \* \* \*

#### ■ 8. Amend § 32.32 Illinois by:

■ a. Revising the introductory text of paragraph A., revising paragraph A.2., adding paragraph A.3., and revising paragraph D. of Chautauqua National Wildlife Refuge;

■ b. Revising Crab Orchard National Wildlife Refuge;

■ c. Revising paragraphs A., B.1., C.1., and D. of Cypress Creek National Wildlife Refuge;

■ d. Revising paragraphs A.1., A.2., B., C., and D.1. of Emiquon National Wildlife Refuge;

■ e. Revising paragraphs D.3. and D.4. of Meredosia National Wildlife Refuge;

■ f. Revising paragraphs A.1., A.2., B., C., and D. of Middle Mississippi River National Wildlife Refuge; and

■ g. Revising paragraphs A.1., A.2., B., C., and D.4. of Two Rivers National Wildlife Refuge to read as follows:

#### § 32.32 Illinois.

\* \* \* \* \*

#### Chautauqua National Wildlife Refuge

*A. Migratory Game Bird Hunting.* We allow hunting of waterfowl on designated areas of the refuge in accordance with State regulations subject to the following conditions:

\* \* \* \* \*

2. Hunters must remove boats, decoys, blinds, and blind materials at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

3. We prohibit the construction or use of permanent blinds, stands, or scaffolds (see § 27.92 of this chapter).

\* \* \* \* \*

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing on Lake Chautauqua from January 15 through October 15. We prohibit fishing in the Waterfowl Hunting Area during the waterfowl hunting season.

2. We allow bank fishing from legal sunrise to legal sunset from October 16 to January 14 between the boat ramp and the fishing trail in the North Pool and from Goofy Ridge Public Access to the west gate of the north pool water control structure.

3. Motorboats must not exceed "no-wake" speeds.

4. We prohibit the public entering Weis Lake on the Cameron-Billsbach Unit of the refuge from October 16 through January 14.

#### Crab Orchard National Wildlife Refuge

*A. Migratory Game Bird Hunting.* We allow hunting of waterfowl on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters may hunt waterfowl, by daily permit drawing, on the controlled areas of Grassy Point, Carterville, and Greenbriar land areas, as well as on Orchard, Sawmill, Turkey, and Grassy islands from ½ hour before legal sunrise to posted closing times each day during the goose season. Hunters may hunt waterfowl in these areas, including the lake shoreline, only from existing refuge blinds during the goose season.

2. We prohibit waterfowl hunting in the restricted use area of Crab Orchard Lake.

3. We prohibit the construction or use of permanent blinds, stands, platforms, or scaffolds (see § 27.92 of this chapter).

4. Hunting blinds must be a minimum of 200 yards (180 m) apart.

5. Hunters must remove all boats, decoys, blinds, blind materials, and other personal equipment (see §§ 27.93 and 27.94 of this chapter) from the refuge at the end of each day's hunt.

6. Goose hunters outside the controlled goose hunting area on Crab Orchard Lake must hunt from a blind that is on shore or anchored a minimum of 200 yards (180 m) away from any shoreline. Waterfowl hunters may also hunt on the east shoreline in Grassy Bay.

*B. Upland Game Hunting.* We allow hunting of upland game on designated areas of the refuge in accordance with

State regulations subject to the following conditions:

1. We prohibit upland game hunting in the controlled goose hunting areas during the goose hunting season, except we allow furbearer hunting from legal sunset to legal sunrise.

2. We prohibit upland game hunting within 50 yards (45 m) of all designated public use facilities, including but not limited to parking areas, picnic areas, campgrounds, marinas, boat ramps, public roads, and established hiking trails listed in the refuge trails brochure.

3. We prohibit hunters using rifles or handguns with ammunition larger than .22 caliber rimfire, except they may use black powder firearms up to and including .40 caliber.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require all deer and turkey hunters using the restricted use area to check in at the refuge visitor contact station prior to hunting.

2. We allow deer hunting with archery equipment only in the following areas:

i. In the controlled goose hunting area;

ii. On all refuge lands north of Illinois State Route 13; and

iii. In the area north of the Crab Orchard Lake emergency spillway and west of Crab Orchard Lake.

3. We prohibit big game hunting within 50 yards (45 m) of all designated public use facilities, including but not limited to parking areas, picnic areas, campgrounds, marinas, boat ramps, public roads, and established hiking trails listed in the refuge trails brochure.

4. You must remove all portable hunting stands, blinds, and other hunting equipment from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

5. Condition A3 applies.

*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. On Crab Orchard Lake west of Wolf Creek Road:

i. Anglers may fish from boats all year.

ii. Anglers must remove all trotlines/jugs from legal sunrise until legal sunset from the Friday immediately prior to Memorial Day through Labor Day.

2. On Crab Orchard Lake east of Wolf Creek Road:

i. Anglers may fish from boats March 15 through September 30.

ii. Anglers may fish all year at the Wolf Creek and Route 148 causeways.

3. Anglers must check and remove fish from all jugs and trotlines daily.

4. We prohibit using stakes to anchor any trotlines.

5. Anglers must tag all trotlines with their name and address.

6. We prohibit anglers using jugs or trotlines with any flotation device that has previously contained any petroleum-based material or toxic substance.

7. Anglers must attach a buoyed device that is visible on the water's surface to all trotlines.

8. Anglers may use all noncommercial fishing methods, except they may not use any underwater breathing apparatus.

9. On A-41, Bluegill, Managers, Honkers, and Vistors Ponds:

i. Anglers may fish only from legal sunrise to legal sunset March 15 through September 30.

ii. We prohibit anglers from using boats or floatation devices.

10. Anglers may not submerge any pole or similar object to take or locate any fish.

11. Organizers of all fishing events must possess a refuge-issued permit.

12. We prohibit anglers from fishing within 250 yards (225 m) of an occupied waterfowl hunting blind.

13. We restrict motorboats to slow speeds leaving "no wake" in Cambria Neck, and within 150 feet (45 m) of any shoreline, swimming area, marina entrance, boat ramp, or causeway tunnel on Crab Orchard, Little Grassy, or Devils Kitchen Lakes.

#### Cypress Creek National Wildlife Refuge

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, woodcock, dove, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require hunters to possess and carry a free refuge hunting permit while hunting on the refuge.

2. Hunters must remove all boats, decoys, blinds, blind materials, stands, and platforms (see §§ 27.93 and 27.94 of this chapter) brought onto the refuge at the end of each day's hunt.

3. We prohibit the construction or use of permanent blinds, platforms, and scaffolds (see § 27.92 of this chapter).

4. We prohibit outboard motors larger than 10 hp.

5. We prohibit the use of paint, flagging, reflectors, tacks, or other manmade materials to mark trails or hunting locations.

6. We allow dove hunting beginning on September 1 and continuing on the following Mondays, Wednesdays, and Saturdays throughout the State season.

7. We allow the use of hunting dogs, provided the dogs are under the immediate control of the hunter at all times (see § 26.21(b) of this chapter).

8. On the Bellrose Waterfowl Reserve:

i. We prohibit all upland game hunting, big game hunting, and duck hunting.

ii. You may hunt goose only following the closure of the State duck hunting season.

iii. We allow goose hunting only on Tuesdays, Thursdays, Saturdays, and Sundays.

iv. We allow hunting from ½ hour before legal sunrise until 1 p.m.

v. Hunters must exit the Reserve by 2 p.m.

vi. We prohibit entry to the Reserve prior to 4:30 a.m.

vii. We prohibit hunting during the special snow goose seasons after closure of the regular goose seasons.

viii. We prohibit construction or use of pit blinds (see § 27.92 of this chapter).

ix. We prohibit hunting within 100 yards (90 m) of any private property boundary.

x. All hunting parties must be at least 200 yards (180 m) apart.

xi. All hunters must sign in and out and report daily harvest at the hunter registration station.

xii. All hunting parties must hunt over a minimum of 12 decoys at each blind site.

#### *B. Upland Game Hunting.* \* \* \*

1. Conditions A1, A2, A3, A4, A5, and A7 apply.

#### *C. Big Game Hunting.* \* \* \*

1. Conditions A1, A2, A3, A4, and A5 apply.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Condition A4 applies.

2. Anglers must remove all boats and fishing equipment (see § 27.93 of this chapter) brought onto the refuge at the end of each day's fishing activity.

3. We prohibit the use of trotlines, jugs, yo-yos, nets, or any commercial fishing equipment except in areas where State regulation authorizes commercial tackle.

4. We prohibit the use of more than two poles per angler and more than two hooks or lures per pole.

5. We prohibit possession of bass less than 15 inches (37.5 cm) in length from refuge ponds.

6. We prohibit possession of more than six channel catfish from refuge ponds.

#### Emiquon National Wildlife Refuge

##### *A. Migratory Game Bird Hunting.*

\* \* \*

1. We prohibit the construction or use of permanent blinds, stands, or scaffolds (see §§ 27.93 and 27.94 of this chapter).

2. Hunters must remove boats, decoys, blinds, and blind materials (see §§ 27.93 and 27.94 of this chapter) brought onto the refuge at the end of each day's hunt.

\* \* \* \* \*

*B. Upland Game Hunting.* We allow upland game hunting on designated areas of the refuge in accordance with State regulations subject to the following condition: We allow access for hunting from 1 hour before legal sunrise until legal sunset.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit the construction or use of permanent blinds, platforms, or ladders (see § 27.93 of this chapter).

2. You must remove all portable hunting stands and blinds from the area at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

##### *D. Sport Fishing.* \* \* \*

1. We prohibit leaving boats on refuge waters overnight (see § 27.93 of this chapter).

\* \* \* \* \*

#### Meredosia National Wildlife Refuge

\* \* \* \* \*

##### *D. Sport Fishing.* \* \* \*

\* \* \* \* \*

3. We prohibit leaving boats on refuge waters overnight (see § 27.93 of this chapter).

4. Motorboats must not exceed "no-wake" speeds.

#### Middle Mississippi River National Wildlife Refuge

##### *A. Migratory Game Bird Hunting.*

\* \* \*

1. We prohibit the construction or use of permanent blinds, stands, scaffolds, or platforms (see § 27.92 of this chapter).

2. Hunters must remove boats, blinds, blind materials, stands, decoys, and other hunting equipment (see §§ 27.93 and 27.94 of this chapter) from the refuge at the end of each day.

*B. Upland Game Hunting.* We allow hunting of upland game on the refuge in accordance with State regulations subject to the following condition: We allow hunting of furbearers only from legal sunrise to legal sunset.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on the refuge in accordance with State regulations subject to the following conditions:

1. The Harlow and Meissner Island Divisions are open only to archery hunting.

2. Conditions A1 and A2 apply.

3. On refuge lands where archery and firearm hunting seasons (shotgun, rifle, muzzleloader) run concurrent, archery hunters must comply with firearm blaze-orange, safety requirements for the State in which they are hunting (i.e., Missouri or Illinois).

*D. Sport Fishing.* We allow fishing on the refuge in accordance with State regulations subject to the following conditions:

1. We close the Meissner Island Division to all sport fishing.
2. We prohibit the taking of turtle and frog (see § 27.21 of this chapter).
3. We allow fishing only from legal sunrise to legal sunset.
4. Anglers must remove all fishing devices (see § 27.93 of this chapter) at the end of each day's fishing.

\* \* \* \* \*

## Two Rivers National Wildlife Refuge

### *A. Migratory Game Bird Hunting.*

\* \* \*

1. We prohibit the construction or use of permanent blinds, stands, scaffolds, or platforms (see § 27.92 of this chapter).
2. Hunters must remove boats, decoys, blinds, and blind materials (see §§ 27.93 and 27.94 of this chapter) brought onto the refuge at the end of each day's hunt.

*B. Upland Game Hunting.* We allow upland game hunting only on the Apple Creek Division and the portion of the Calhoun Division east of the Illinois River Road in accordance with State regulations subject to the following condition: We allow hunting from legal sunrise to legal sunset.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on the Apple Creek Division and the portion of the Calhoun Division east of the Illinois River Road in accordance with State regulations subject to the following conditions:

1. We prohibit the construction or use of permanent blinds, platforms, or ladders (see § 27.92 of this chapter).
2. Hunters must remove all portable hunting stands and blinds from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

### *D. Sport Fishing.*

\* \* \* \* \*

4. Anglers must remove boats and all other fishing devices (see § 27.93 of this chapter) at the end of each day's fishing activity.

\* \* \* \* \*

## ■ 9. Amend § 32.33 Indiana by:

- a. Revising paragraphs B., C., and D. of Big Oaks National Wildlife Refuge;
- b. Revising paragraphs B., C., and D. of Muscatatuck National Wildlife Refuge; and

■ c. Revising Patoka River National Wildlife Refuge and Management Area to read as follows:

## § 32.33 Indiana.

\* \* \* \* \*

## Big Oaks National Wildlife Refuge

\* \* \* \* \*

*B. Upland Game Hunting.* We allow hunting of squirrel in accordance with State regulations subject to the following conditions:

1. We require a refuge access permit.
2. We allow the use of hunting dogs only during the squirrel hunting season. Hunters must ensure that all hunting dogs wear a collar displaying the owner's name, address, and telephone number.

3. Hunters must hunt only in assigned areas. We prohibit trespass into an unassigned hunt area.

4. In areas posted "Area Closed," we prohibit entry, including hunting.

5. We prohibit the use of flagging tape and reflective tacks.

6. We allow the use of squirrel hunting dogs only in the day-use area.

7. Permitted squirrel hunters are the only hunters authorized to possess a rifle (only .22 rimfire) on the refuge.

8. Squirrel hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).

9. We prohibit the use or possession of handguns on the refuge.

10. We require that hunters check all harvested game taken on the refuge at the refuge check station.

11. We require all refuge hunters to hunt with a partner. We require hunting partners to know the location of their partner while hunting. Youth hunters, anyone age 17 or under, must be directly supervised by a responsible adult age 18 or older.

12. We prohibit possession of alcoholic beverages on the refuge (see § 32.2(j)).

13. Hunters must possess and carry a compass while hunting on the refuge.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B1, B3, B4, B5, B9, B10, B11, B12, and B13 apply.

2. The refuge access permit will contain bag limits and license requirements.

3. We allow the use of portable hunting stands and blinds. All hunting stands and blinds may be left in the field overnight only if the hunter will be hunting that same location the following day. We prohibit tree steps or screw-in steps (see § 32.2(i)).

*D. Sport Fishing.* We allow fishing on the Old Timbers Lake in accordance with State regulations subject to the following conditions:

1. We require a refuge access permit.
2. We only allow fishing with a rod and reel or pole and line.
3. We prohibit the use of trotlines.
4. We allow boats only rowed, paddled, or powered by an electric trolling motor on the Old Timbers Lake.
5. We prohibit retaining black bass, largemouth bass, smallmouth bass, and spotted bass between 12 and 15 inches (30 and 37.5 cm).

## Muscatatuck National Wildlife Refuge

\* \* \* \* \*

*B. Upland Game Hunting.* We allow hunting of quail, squirrel, and rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit discharge of firearms within 100 yards (90 m) of an occupied dwelling.

2. We allow the use of hunting dogs only for hunting rabbit and quail, provided the dogs are under the immediate control of the hunter at all times (see § 26.21(b) of this chapter).

3. We allow .22 caliber rifles only with rimfire ammunition and shotgun for upland game hunting.

4. We prohibit quail, squirrel, and rabbit hunting during refuge deer hunts.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Condition B1 applies.

2. You must possess and carry a refuge permit during the State muzzleloader deer season.

3. You must possess and carry a refuge permit during the deer archery hunting season that overlaps with the State muzzleloader deer season.

4. Our late archery season deer hunt opens at the end of the State muzzleloader season and ends at the conclusion of the State late archery season.

5. We prohibit the construction or use of permanent blinds, platforms, or ladders (see § 27.92 of this chapter).

6. Hunters may take only one deer per day from the refuge.

7. We allow only spring turkey hunting on the refuge, and hunters must possess a refuge permit.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow the use of boats only on Stanfield Lake. We prohibit the use of gasoline- or electric-powered boat



motors. We allow manual- (foot- or hand-) propelled boats.

2. We allow the use of belly boats or float tubes in all designated fishing areas.

3. We allow fishing only with rod and reel or pole and line.

4. We prohibit harvest of frog and turtle (see § 27.21 of this chapter).

#### **Patoka River National Wildlife Refuge and Management Area**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds on designated areas of the refuge and the White River Wildlife Management Area in accordance with State regulations subject to the following conditions:

1. We prohibit the construction or use of permanent blinds, stands, platforms, or scaffolds (see § 27.92 of this chapter).

2. Hunters must remove all boats, decoys, blinds, and blind materials after each day's hunt (see §§ 27.93 and 27.94 of this chapter).

3. We allow motorboats only on Snakey Point Marsh east of the South Fork River and the Patoka River. All other areas are open to either manual-powered boats or boats with battery-driven motors only.

4. Motorboats must not exceed "no wake" speeds.

5. We prohibit the use of powered airboats on the refuge.

6. We close the Cane Ridge Wildlife Management Area to all hunting.

*B. Upland Game Hunting.* We allow hunting of bobwhite quail, cottontail rabbit, squirrel (gray and fox), turkey, red and gray fox, coyote, opossum, and raccoon in accordance with State regulations subject to the following conditions:

1. You must possess and carry a refuge permit for all furbearer hunting.

2. We allow the use of dogs for hunting, provided the dog is under the immediate control of the hunter at all times (see § 26.21(b) of this chapter).

*C. Big Game Hunting.* We allow hunting of white-tailed deer in accordance with State regulations subject to the following conditions:

1. We prohibit the construction or use of permanent blinds, stands, platforms, or scaffolds (see § 27.92 of this chapter).

2. Condition A6 applies.

3. We prohibit marking trails with tape, ribbons, paper, paint, tacks, tree blazes, or other devices.

*D. Sport Fishing.* We allow sport fishing on all areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow sport fishing in accordance with State regulations on the main channel of the Patoka River.

2. All other refuge waters are subject to the following conditions:

i. We allow fishing from legal sunrise to legal sunset.

ii. We allow fishing only with rod and reel or pole and line.

iii. The minimum size limit for large-mouth bass on Snakey Point Marsh is 14 inches (35 cm).

iv. You must possess and carry a refuge permit to take bait fish, crayfish, snapping turtle, and bullfrog.

3. Anglers must remove boats at the end of each day's fishing activity (see § 27.93 of this chapter).

4. Conditions A2 through A5 apply.

■ 10. Amend § 32.34 Iowa by revising paragraphs B., C., and D. of DeSoto National Wildlife Refuge to read as follows:

#### **§ 32.34 Iowa.**

\* \* \* \* \*

#### **DeSoto National Wildlife Refuge**

\* \* \* \* \*

*B. Upland Game Hunting.* We allow youth hunting of ring-necked pheasant on designated areas of the refuge in accordance with the States of Iowa and Nebraska regulations. The refuge manager will annually determine and publish hunting seasons, dates, and designated areas.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and wild turkey on designated areas of the refuge in accordance with States of Iowa and Nebraska regulations subject to the following conditions:

1. The refuge manager will annually determine and publish hunting seasons and dates and include them in the refuge access permit.

2. You must possess and carry a refuge access permit at all times while in the hunting area. Hunters may enter the hunting areas only within the dates listed on the Refuge Access Permit.

3. All areas open to hunting may be accessed by hunters with a valid Iowa or Nebraska resident hunting permit. Reciprocity exists, with both States allowing hunters with either resident permit to access refuge hunting land in either State.

4. Hunters holding nonresident Nebraska or nonresident Iowa permits may hunt only on the ground that lies within the State that issued the nonresident permit.

5. We allow hunters in the designated area from 3 hours before legal sunrise until 2 hours after legal sunset.

6. We require all hunters using the designated archery hunting areas to individually register their name and vehicle at the parking area prior to entering the archery area. After hunting,

hunters must complete the daily registration by recording the number of hours hunted and kill information.

7. All hunters must be in possession of a valid Entrance Fee Permit.

8. Hunters may not construct or use permanent blinds or stands. Hunters must remove hunting blinds or stands and other property by the close of the season (see §§ 27.93 and 27.94 of this chapter).

9. We prohibit shooting on or over any refuge road open to vehicle traffic within 30 feet (9 m) of the centerline.

10. We prohibit field dressing of any big game within 100 feet (30 m) of the centerline of any refuge road.

11. We prohibit use of two-way mobile radio transmitters to communicate the location or direction of game or to coordinate the movement of other hunters.

*D. Sport Fishing.* We allow sport fishing in DeSoto Lake in accordance with the States of Iowa and Nebraska regulations subject to the following conditions:

1. We allow ice fishing in DeSoto Lake January 2 through the end of February. The refuge manager may open DeSoto Lake to ice fishing before January 2 or after the end of February, depending on ice conditions.

2. We allow the use of pole and line or rod and reel fishing in DeSoto Lake from April 15 through October 14. The refuge manager may open DeSoto Lake to fishing as early as April 1, depending on waterfowl usage each year.

3. We allow the use of archery and spear fishing for nongame fish only from April 15 through October 14.

4. When the lake is open to ice fishing, we prohibit motor- or wind-driven conveyances on the lake.

5. We allow the use of portable ice fishing shelters on a daily basis from January 2 through the end of February. The refuge manager may open DeSoto Lake to the use of ice fishing shelters before January 2 or after the end of February, depending on ice conditions.

6. Anglers may use no more than two lines and two hooks per line, including ice fishing.

7. We prohibit the use of trotlines, float lines, bank lines, or setlines.

8. Anglers must adhere to minimum length and creel limits as posted.

9. We prohibit anglers leaving any personal property, litter, fish or any parts thereof, on the banks, in the water, or on the ice.

10. We prohibit digging or seining for bait.

11. We prohibit take or possession of turtle or frog at any time (see § 27.21 of this chapter).

12. We limit boating to "no-wake" speeds, not to exceed 5 miles per hour.

13. We allow anglers on the refuge from ½ hour before legal sunrise to ½ hour after legal sunset.

\* \* \* \* \*

■ 11. Amend § 32.35 Kansas by revising paragraphs A.1. through A.3., adding paragraph A.4., revising paragraphs B.1., B.2., adding paragraphs B.3. and B.4., revising paragraphs C.1. through C.3., adding paragraphs C.4. and C.5., and revising paragraph D. of Marais des Cygnes National Wildlife Refuge to read as follows:

**§ 32.35 Kansas.**

\* \* \* \* \*

**Marais des Cygnes National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

1. We restrict outboard motor use to the westernmost 5½ miles (8.8 km) of the Marais des Cygnes River. You may use only nonmotorized boats and electric trolling motors on remaining waters in designated areas of the refuge.

2. We prohibit discharge of firearms within 150 yards (135 m) of any residence or occupied building.

3. We allow only temporary portable blinds and blinds made from natural vegetation.

4. You must remove boats, decoys, portable blinds, and other personal property from the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* \* \* \*

1. Condition A2 applies.

2. We prohibit centerfire and rimfire rifles and pistols.

3. You may possess only bow and arrow or shotguns smaller than 10 gauge while hunting upland game.

4. We require the use of approved nontoxic shot (see § 32.2(k)).

*C. Big Game Hunting.* \* \* \*

1. Conditions A2, A3, A4, B2, and B4 apply.

2. You must possess and carry a refuge access permit to hunt deer and spring turkey.

3. We prohibit hunting with the aid of or distribution of any feed, salt, or other mineral (see § 32.2(h)).

4. We allow the use of portable tree stands. You must label portable tree stands left overnight with your name and phone number so it is visible from the ground.

5. You may install portable tree stands no sooner than September 15, and you must remove them by January 15 of each year.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations

subject to the following condition: Condition A1 applies.

\* \* \* \* \*

■ 12. Amend § 32.36 Kentucky by revising paragraphs A.6. and A.8., removing paragraph A.10., redesignating paragraphs A.11. through A.18. as paragraphs A.10. through A.17., and revising paragraphs B.1., B.3., B.5., B.6., and C.1. of Clarks River National Wildlife Refuge to read as follows:

**§ 32.36 Kentucky.**

\* \* \* \* \*

**Clarks River National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

6. To track game in or retrieve game from a posted closed area of the refuge, the hunter must first receive authorization from the refuge manager at 270–527–5770 or the law enforcement officer at 270–703–2836.

\* \* \* \* \*

8. We close portions of abandoned railroad tracks within the refuge boundary to vehicle access (see § 27.31 of this chapter).

\* \* \* \* \*

*B. Upland Game Hunting.* \* \* \*

1. Conditions A1 through A13 apply.

\* \* \* \* \*

3. You may not kill or cripple a wild animal without making a reasonable effort to retrieve the animal and harvest a reasonable portion to be included in your daily bag limit.

\* \* \* \* \*

5. You may possess only approved nontoxic shot (see § 32.2(k)) while hunting small game.

6. You may hunt coyote only during any daytime refuge hunt with weapons and ammunition allowed for that hunt.

*C. Big Game Hunting.* \* \* \*

1. Conditions A1 through A17 and B3 apply.

\* \* \* \* \*

■ 13. Amend § 32.37 Louisiana by:

■ a. Revising paragraphs A. and B. of Atchafalaya National Wildlife Refuge;

■ b. Revising paragraphs D.1. and D.2. of Bayou Sauvage National Wildlife Refuge;

■ c. Revising the introductory text of paragraph A., revising paragraphs A.1., A.3., and A.4., removing paragraph A.10., redesignating paragraphs A.11. through A.13. as paragraphs A.10. through A.12., revising newly designated paragraph A.10., and revising paragraphs B.4., B.6., C.1., C.2., C.7., C.9., D.3., and D.5. of Bayou Teche National Wildlife Refuge;

■ d. Revising the introductory text of paragraph A., revising paragraphs A.1.,

A.7., and A.10., adding paragraph A.14., revising the introductory text of paragraph B., revising paragraphs B.3., B.4., C.4., C.5., C.6., and C.8., removing paragraphs C.9. and C.10., and revising paragraphs D.1. and D.3. of Big Branch Marsh National Wildlife Refuge;

■ e. Adding paragraph C.8. of Black Bayou Lake National Wildlife Refuge;

■ f. Revising paragraphs A.1., A.2., A.3., A.7., and A.8., adding paragraph A.11., revising paragraphs B.1. and B.2., removing paragraph B.3., redesignating paragraphs B.4. through B.8. as paragraphs B.3. through B.7., revising newly designated paragraph B.3., removing paragraph B.9., revising paragraphs C.1., C.2., C.4., and C.5., removing paragraph C.8., redesignating paragraphs C.9. through C.11. as paragraphs C.8. through C.10., revising newly designated paragraph C.8., revising the introductory text of paragraph D., and revising paragraph D.2. of Bogue Chitto National Wildlife Refuge;

■ g. Revising paragraphs A., D.2., D.4., D.5., D.7., D.14., and D.15. of Cameron Prairie National Wildlife Refuge;

■ h. Revising paragraphs A.2., A.5., A.10., A.17., and A.18., adding paragraphs A.26. through A.28., revising paragraphs B.1. and B.3., adding paragraph B.6., revising paragraphs C.1., C.2., C.4., D.2., and D.7., and removing paragraph D.11. of Cat Island National Wildlife Refuge;

■ i. Revising the introductory text of paragraph A., revising paragraph A.4., adding paragraph A.17., revising paragraph B.1., adding paragraph B.11., revising paragraph C.1., adding paragraphs C.12. and C.13., and revising paragraph D.1. of Catahoula National Wildlife Refuge;

■ j. Revising paragraph A.6. and adding paragraph C.11. of D'Arbonne National Wildlife Refuge;

■ k. Revising paragraphs A.1. and A.7., removing paragraph A.10., redesignating paragraphs A.11. through A.13. as paragraphs A.10. through A.12., revising newly designated paragraphs A.10. and A.12., revising paragraph B.4., the introductory text of paragraph C., and paragraphs C.1., D.1., and D.4. of Delta National Wildlife Refuge;

■ l. Revising the introductory text of paragraph A., revising paragraphs A.5., A.15., A.19., A.21., adding paragraph B.8., revising paragraphs C.1. and C.2., removing paragraph C.5., redesignating paragraphs C.6. through C.9. as paragraphs C.5. through C.8., and revising newly designated paragraph C.6. and paragraphs D.6., D.8., and D.15. of Grand Cote National Wildlife Refuge;

■ m. Revising paragraphs A.1., A.7., and A.8., revising the introductory text of

paragraph C., removing paragraph C.5., redesignating paragraphs C.6. through C.12. as paragraphs C.5. through C.11., revising newly redesignated paragraph C.6., and revising paragraph D.5. of Lacassine National Wildlife Refuge;

■ n. Revising the introductory text of paragraph A., revising paragraphs A.5., A.11., and A.13., adding paragraph A.24., revising paragraph B.2., adding paragraph B.7., revising paragraphs C.1., C.2., and C.3., removing paragraph C.4., and redesignating paragraphs C.5. through C.17. as paragraphs C.4. through C.16., revising newly redesignated paragraphs C.4. and C.10., and adding paragraphs C.17. and C.18. of Lake Ophelia National Wildlife Refuge;

■ o. Revising paragraphs A.3., A.5., C.1., C.3., C.6., D.3., and D.4. of Mandalay National Wildlife Refuge;

■ p. Adding paragraph C.9. of Red River National Wildlife Refuge;

■ q. Revising paragraphs A., D.4., D.7. introductory text, D.7.i., D.8. introductory text, D.8.ii., D.8.viii., and D.8.xii. of Sabine National Wildlife Refuge;

■ r. Revising paragraphs A.4., A.5., A.7., A.10., A.11., A.13., B.2., B.5., B.6., B.7., C.3., C.4., and C.6. through C.15., adding paragraphs C.16. through C.18., and revising paragraph D. of Tensas River National Wildlife Refuge; and

■ s. Revising paragraphs A.8. and A.12., the introductory text of paragraph C., revising paragraph C.4., and adding paragraph C.11. of Upper Ouachita National Wildlife Refuge to read as follows:

#### **§ 32.37 Louisiana.**

\* \* \* \* \*

#### **Atchafalaya National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds on designated areas of the refuge in accordance with State regulations subject to the following condition: Hunting must be in accordance with State-issued Sherburne Wildlife Management Area regulations.

*B. Upland Game Hunting.* We allow hunting of upland game on designated areas of the refuge in accordance with State regulations subject to the following condition: Hunting must be in accordance with State-issued Sherburne Wildlife Management Area regulations.

\* \* \* \* \*

#### **Bayou Sauvage National Wildlife Refuge**

\* \* \* \* \*

#### *D. Sport Fishing.* \* \* \*

1. The refuge is open from 30 minutes before legal sunrise to 30 minutes after legal sunset.

2. We allow sport fishing and shellfishing year-round on all refuge lands south of the Intracoastal Waterway, from the banks of U.S. Highway 11, and within the banks of the borrow canal and borrow pits between U.S. Highway 11 and Interstate 10. We close the remainder of the refuge from November 1 through January 31.

\* \* \* \* \*

#### **Bayou Teche National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory waterfowl on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. All hunters must possess and carry a signed hunt permit while hunting on the refuge. This permit is free and available on the front cover of the refuge brochure.

\* \* \* \* \*

3. Youth hunters under age 16 must have completed a State-approved Hunter Education Course and possess and carry a card or certification of completion. Each youth hunter under age 16 must remain within sight and normal voice contact of an adult age 21 or older. Each adult may supervise no more than two refuge-permitted youth hunters. We require all adult supervisors and hunters of migratory waterfowl to possess and carry a State hunter safety course card or certificate.

4. We require waterfowl hunters to remove all portable blinds, boats, decoys, and other personal equipment from the refuge by 1 p.m. daily.

\* \* \* \* \*

10. We allow waterfowl hunting in Centerville, Garden City, and Bayou Sale Units during the State waterfowl season. We open no other units to migratory waterfowl hunting.

\* \* \* \* \*

#### *B. Upland Game Hunting.* \* \* \*

\* \* \* \* \*

4. We allow hunting 7 days per week beginning with the opening of the State season in Centerville, Garden City, Bayou Sale, North Bend—East, and North Bend—West Units through the last day of the State waterfowl season in the West Zone. We open no other units to the hunting of upland game.

\* \* \* \* \*

6. Conditions A1, A2, A3, A5, A6, A7, A8, and A12 apply.

\* \* \* \* \*

#### *C. Big Game Hunting.* \* \* \*

1. We allow hunting of deer only with firearms (see § 27.42 of this chapter)

during 5 specific days during October and November. A youth gun hunt will occur during the last weekend of October. The general gun hunt will occur during the final full weekend in November. The general gun hunt will be a lottery hunt. We will require a Lottery Hunt Permit. Hunters will find permit application procedures in the refuge brochure. The youth gun hunt includes both Saturday and Sunday. The general gun hunt includes the Friday immediately before the weekend.

2. We allow hunting of deer with archery equipment from the start of the State archery season until the last day of November in the following units: Garden City, North Bend—East, and North Bend—West. The following units are open to archery deer hunting from the start of the State archery season until January 31: Centerville, Bayou Sale, and Garden City (south of Garden City levee only). We close refuge archery hunting on those days that the refuge deer gun hunts occur.

\* \* \* \* \*

7. We allow the use of portable deer stands according to State of Louisiana Wildlife Management Area regulations.

\* \* \* \* \*

9. Conditions A1, A2, with the following exception to A3: One adult may supervise only one youth; A5, A6, A7, A8, B3, and B5 apply.

#### *D. Sport Fishing.* \* \* \*

\* \* \* \* \*

3. The refuge is open from legal sunrise until legal sunset unless stated otherwise.

\* \* \* \* \*

5. Conditions A6 and A8 apply.

#### **Big Branch Marsh National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, coot, goose, snipe, rail, gallinule, and woodcock on designated areas of the refuge during the State waterfowl season in accordance with State regulations subject to the following conditions:

1. We allow waterfowl hunting on Wednesdays, Thursdays, Saturdays, and Sundays from 30 minutes before legal sunrise until 12 p.m. (noon), including the State special teal season and State youth waterfowl hunt.

\* \* \* \* \*

7. Youth hunters under age 16 must have completed a hunter education course and possess and carry evidence of completion. An adult age 21 or older must closely supervise youth hunters (within sight and normal voice contact). One adult may supervise no more than two youth hunters.

\* \* \* \* \*

10. We prohibit hunting within 150 feet (45 m) of any road open to vehicle travel, any residence, or Boy Scout Road (see § 27.31 of this chapter).

\* \* \* \* \*

14. We prohibit horses.

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, and quail on designated areas of the refuge in accordance with State regulations subject to the following conditions:

\* \* \* \* \*

3. We allow dogs to only locate, point, and retrieve when hunting for quail.

4. Conditions A5 through A14 apply.

*C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

4. You may take deer of either sex in accordance with State regulations. The State season limits apply.

5. Hunters may erect temporary deer stands 14 days prior to the start of deer season. Hunters must remove all deer stands within 14 days of the end of the refuge deer season (see §§ 27.93 and 27.94 of this chapter).

6. Hunters may take hogs only during the refuge deer archery hunt.

\* \* \* \* \*

8. Conditions A5 through A14 apply, except in condition A7: One adult may supervise only one youth while hunting big game.

*D. Sport Fishing.* \* \* \*

1. You may only fish from ½ hour before legal sunrise to ½ hour after legal sunset, except in the Lake Road area.

\* \* \* \* \*

3. We prohibit the use of trotlines, limblines, slat traps, gar sets, nets, or alligator lines on the refuge. You may take bait with cast nets 8 feet (2.4 m) in diameter or less.

\* \* \* \* \*

#### **Black Bayou Lake National Wildlife Refuge**

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

8. We prohibit possession or distribution of bait or hunting with the aid of bait, including any grain, salt, minerals, or other feed or any nonnaturally occurring attractant on the refuge (see § 32.2(h)).

\* \* \* \* \*

#### **Boque Chitto National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

1. We allow hunting from 30 minutes before legal sunrise until 12 p.m. (noon).

2. We allow woodcock hunting in accordance with State regulations using only approved nontoxic shot (see § 32.2(k)) size #4 or smaller.

3. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. One adult may supervise up to two youth hunters.

\* \* \* \* \*

7. We prohibit hunting within 150 feet (45 m) of any public road, refuge road, designated trail, building, residence, designated public facility, or from or across aboveground oil or gas or electric facilities.

8. We prohibit possession of slugs, buckshot, rifle, or pistol ammunition unless otherwise specified.

\* \* \* \* \*

11. We prohibit horses.

*B. Upland Game Hunting.* \* \* \*

1. You may possess only approved nontoxic shot size #4 or smaller or .22 caliber rimfire or smaller.

2. You may use dogs for rabbit and squirrel from November 1 to the end of the State season except during the refuge gun and muzzleloader season.

3. You may use dogs for raccoon and opossum from January 1 through the last day of February.

\* \* \* \* \*

6. Conditions A3 and A5 through A11 apply.

7. During the refuge deer gun season, all hunters except waterfowl hunters must wear a minimum of 400 square inches (2,600 cm<sup>2</sup>) of unbroken hunter orange as the outermost layer of clothing on the chest and back.

*C. Big Game Hunting.* \* \* \*

1. Conditions A3 (one adult may supervise only one youth hunter during refuge gun deer hunts), A5 through A7, A10, B4, and B7 apply.

2. Hunters may erect temporary deer stands 14 days prior to the start of deer season. Hunters must remove all deer stands within 14 days of the end of the refuge deer season (see §§ 27.93 and 27.94 of this chapter).

\* \* \* \* \*

4. We list specific dates for general gun big game hunts in the refuge hunt brochure.

5. We list specific dates for primitive weapons big game hunts in the refuge hunt brochure.

\* \* \* \* \*

8. You may take hog as incidental game while participating in the refuge archery, primitive weapon, and general gun deer hunts only. We list specific dates for the special hog hunts in January and February in the refuge hunt brochure. During the special hog hunts you must use trained hog-hunting dogs

to aid in the take of hog. During the special hog hunts you may take hog from 30 minutes before legal sunrise to 30 minutes after legal sunset, and you must use pistol or rifle ammunition not larger than .22 caliber rimfire or shotgun with nontoxic shot to take the hog after it has been caught by dogs.

\* \* \* \* \*

*D. Sport Fishing.* We allow recreational fishing year-round in accordance with State regulations subject to the following conditions:

\* \* \* \* \*

2. Conditions A9 and B4 apply.

\* \* \* \* \*

#### **Cameron Prairie National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of light and white-fronted goose, duck, coot, snipe, and dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The waterfowl hunt is a youth hunt only. We set dates in September, and you may obtain information from the refuge. We will accept permit applications September 1 through October 20 and limit applications to a choice of three dates. We will notify successful applicants.

2. All hunters born on or after September 1, 1969, must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter (age 16 and under) must remain within sight and normal voice contact of an adult age 21 or older. For waterfowl hunts, one adult may supervise no more than two youth hunters.

3. We require every hunter to possess and carry signed refuge hunting regulations and permit.

4. Each hunter must complete a Hunter Information Card at a self-clearing check station after each hunt and before leaving the refuge.

5. We allow dove hunting on designated areas during the first split of the State dove season only.

6. We allow snipe hunting on designated areas for the remaining portion of the State snipe season following closure of the State duck and coot season in the West Zone.

7. We prohibit hunting closer than 50 yards (45 m) of any public road, refuge road, trail, building, residence, or designated public facility.

8. We prohibit any person or group from acting as guide, outfitter, or in any other capacity in which any other individual(s) pay or promise to pay directly or indirectly for service

rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

*D. Sport Fishing.* \* \* \*  
\* \* \* \* \*

2. You may recreationally fish, crab, or cast net in the East Cove Unit year-round from legal sunrise to legal sunset, except during the State waterfowl season and when we close the Grand Bayou Boat Bay.

\* \* \* \* \*

4. On East Cove Unit, we prohibit walking, wading, or climbing in or on the marsh, levees, or structures.

5. We allow sport fishing, crabbing, and cast netting in the canal and waterways adjacent to the Gibbstown Unit Bank Fishing Road and the Outfall Canal from March 15 through October 15.

\* \* \* \* \*

7. We allow only recreational crabbing with cotton hand lines or dropnets up to 24 inches (60 cm) outside diameter. We prohibit using floats on crab lines.

\* \* \* \* \*

14. We prohibit the use of ATVs, air-thrust boats, and personal motorized watercraft (Jet Skis) in any refuge area (see § 27.31(f) of this chapter).

15. You may operate outboard motors in refuge canals, bayous, and lakes. In the marsh we allow only trolling motors.

\* \* \* \* \*

#### Cat Island National Wildlife Refuge

##### *A. Migratory Game Bird Hunting.*

\* \* \* \* \*

\* \* \* \* \*

2. Hunters must fill out a free daily "check-in" and "check out" refuge hunting permit obtained at designated check stations and must properly display the associated windshield permit while in parking lots.

\* \* \* \* \*

5. You must use designated parking areas to participate in any refuge public use activity.

\* \* \* \* \*

10. We prohibit transport of loaded weapons on an ATV (see § 27.42(b) of this chapter). For muzzleloaders, we define loaded as cap on primer.

\* \* \* \* \*

17. We prohibit all other hunting during refuge lottery deer hunts.

18. We allow waterfowl hunting on Tuesdays, Thursdays, Saturdays, and Sundays until 12 p.m. (noon) during the designated State duck season.

\* \* \* \* \*

26. We prohibit blocking of gates or trails (see § 27.31(h) of this chapter) with vehicles or ATVs.

27. We prohibit ATVs on trails/roads (see § 27.31 of this chapter) not specifically designated by signs for ATV use.

28. We prohibit handguns for hunting (see § 27.42 of this chapter).

##### *B. Upland Game Hunting.* \* \* \*

1. Conditions A1 through A17 and A19 through A28 apply.

\* \* \* \* \*

3. We allow the use of squirrel and rabbit dogs from the day after the close of the State-designated deer rifle season to the end of the State-designated season. We allow up to two dogs per hunting party for squirrel hunting.

\* \* \* \* \*

6. We prohibit possession or distribution of bait or hunting with the aid of bait, including any grain, salt, minerals, or other feed or nonnaturally occurring attractant on the refuge (see § 32.2(h)).

##### *C. Big Game Hunting.* \* \* \*

1. Conditions A1 through A17, A19 through A28, and B6 apply.

2. We allow archery-only deer hunting on the refuge during the State archery deer season.

\* \* \* \* \*

4. We allow only portable deer stands. Hunters may erect stands 2 days before the beginning of the refuge archery season and must remove them the last day of the State archery season (see §§ 27.93 and 27.94 of this chapter). Hunters may erect stands 2 days before hunting season; however, they must place them in a nonhunting position at the conclusion of each day's hunt.

\* \* \* \* \*

##### *D. Sport Fishing.* \* \* \*

\* \* \* \* \*

2. Conditions A1, A3, A4, A5, A9 (on the open portions of Wood Duck ATV Trail for wildlife-dependent activities throughout the year), A13 through A16, A19, and A21 through A28 apply.

\* \* \* \* \*

7. We allow recreational crawfishing on the refuge subject to specific dates (see refuge brochure for details). The harvest limit is 100 pounds (45 kg) per permit per day.

\* \* \* \* \*

#### Catahoula National Wildlife Refuge

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, gallinule, woodcock, rail, and snipe on designated areas of the Bushley Bayou Unit in accordance with State hunting regulations subject to the following conditions:

\* \* \* \* \*

4. We open the following ATV trails year-round: Round Lake Road; portions of Black Lake and Dempsey Lake Roads beginning at the designated parking areas; portions of Minnow Ponds Road at Highway 8 to Green's Creek Road and then south to Green's Creek Bridge.

\* \* \* \* \*

17. We prohibit parking on the refuge for access to adjoining nonrefuge property.

##### *B. Upland Game Hunting.* \* \* \*

1. Conditions A1, A4 (at the Bushley Bayou Unit), A7 through A14, A16, and A17 apply.

\* \* \* \* \*

11. We require hunters participating in special dog seasons for rabbit and squirrel to wear a minimum of a hunter-orange cap. All other hunters and archers (while on the ground), except waterfowl hunters, also must wear a minimum of a hunter-orange cap during the special dog seasons for rabbit and squirrel.

##### *C. Big Game Hunting.* \* \* \*

1. Conditions A1, A4 (at the Bushley Bayou Unit), A7 through A9, A12 through A14, A16, A17, B4 through B8 (big game hunting), and B11 apply.

\* \* \* \* \*

12. We prohibit possession or distribution of bait or hunting with aid of bait, including any grain, salt, minerals or other feed or nonnaturally occurring attractant on the refuge (see § 32.2(h)).

13. Deer hunters hunting from concealed ground blinds must display a minimum of 400 square inches (2,600 cm<sup>2</sup>) of hunter orange above or around their blinds visible from 360°.

##### *D. Sport Fishing.* \* \* \*

1. Conditions A4 (at the Bushley Bayou Unit), A7, A9, A13 (as a fishing guide), A14, A16, A17, B5, and B7 apply.

\* \* \* \* \*

#### D'Arbonne National Wildlife Refuge

##### *A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

6. We prohibit hunting within 100 feet (30 m) of the maintained rights of way of roads (see § 27.31 of this chapter), and from aboveground oil or gas or electrical transmission facilities.

\* \* \* \* \*

##### *C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

11. We prohibit possession or distribution of bait or hunting with the aid of bait, including any grain, salt, minerals, or other feed or any nonnaturally occurring attractant on the refuge (see § 32.2(h)).

\* \* \* \* \*

**Delta National Wildlife Refuge***A. Migratory Game Bird Hunting.*

\* \* \*

1. We allow waterfowl hunting on Wednesdays, Thursdays, Saturdays, and Sundays from 30 minutes before legal sunrise until 12 p.m. (noon), including the State special teal season, State youth waterfowl season, and State light goose special conservation season.

\* \* \* \* \*

7. We prohibit air-thrust boats, mud boats, and air-cooled propulsion engines on the refuge.

\* \* \* \* \*

10. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult must possess and carry a refuge permit and may supervise no more than two youth hunters.

\* \* \* \* \*

12. We open the refuge from ½ hour before legal sunrise to ½ hour after legal sunset with the exception that hunters may enter the refuge earlier, but not before 4 a.m.

*B. Upland Game Hunting.*

\* \* \* \* \*

4. Conditions A4 through A10 (each adult may supervise no more than two youth hunters during upland game hunting), A11, and A12 apply.

*C. Big Game Hunting.* We only allow archery hunting of white-tailed deer and hog on designated areas of the refuge in accordance with State archery regulations subject to the following conditions:

1. Conditions A4 through A12 apply, with the following exception to condition A10: Each adult can only supervise one youth hunter.

\* \* \* \* \*

*D. Sport Fishing.*

\* \* \*

1. We only allow recreational fishing and crabbing from ½ hour before legal sunrise until ½ hour after legal sunset. During State waterfowl hunting seasons; however, we only allow recreational fishing and crabbing from after 12 p.m. (noon) until ½ hour after legal sunset.

\* \* \* \* \*

4. Conditions A8, A10, and A11 apply.

\* \* \* \* \*

**Grand Cote National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, mourning dove, snipe, rail, and woodcock on designated areas of the

refuge (shown on the refuge hunting brochure map) in accordance with State regulations subject to the following conditions:

\* \* \* \* \*

5. You must use designated parking areas to participate in any refuge public use activity.

\* \* \* \* \*

15. We only allow nonmotorized boats or electric-powered motors.

\* \* \* \* \*

19. We prohibit handguns for hunting (see § 27.42 of this chapter).

\* \* \* \* \*

21. We allow only incidental take of mourning dove and snipe while migratory bird hunting on days open to waterfowl hunting.

\* \* \* \* \*

*B. Upland Game Hunting.*

\* \* \* \* \*

8. We prohibit possession or distribution of bait or hunting with the aid of bait, including any grain, salt, minerals, or other feed or nonnaturally occurring attractant on the refuge (see § 32.2(h)).

*C. Big Game Hunting.*

\* \* \*

1. Conditions A1 through A16, A20, A26, and B8 apply.

2. We allow archery hunting in special designated units (see refuge brochure map) from the beginning of the State archery deer season until the end of the State archery deer season subject to refuge closures resulting from high water conditions.

\* \* \* \* \*

6. Hunters may take one deer of either sex per day during the deer season except during State-designated “bucks” only seasons.

*D. Sport Fishing.*

\* \* \*

6. We allow recreational crawfishing on the refuge subject to specific date restrictions (see refuge brochure for details).

\* \* \* \* \*

8. You may harvest 100 lbs. (45 kg) of crawfish per permit per day.

\* \* \* \* \*

15. We prohibit launching boats with trailers, put or placed, in Coulee des Grues from refuge property.

**Lacassine National Wildlife Refuge***A. Migratory Game Bird Hunting.*

\* \* \*

1. We require every individual hunter to possess and carry a signed refuge hunting permit.

\* \* \* \* \*

7. We prohibit hunting within 50 yards (45 m) of refuge canals; waterways; public roads; buildings;

aboveground oil, gas, or electrical transmission facilities; or designated public facilities. Hunting parties must remain a distance of no less than 150 yards (135 m) away from another hunter.

8. All hunters born on or after September 1, 1969, must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. For waterfowl hunts, one adult may supervise no more than two youth hunters.

\* \* \* \* \*

*C. Big Game Hunting.* We allow archery as the only form of hunting for white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

\* \* \* \* \*

6. We allow boats of all motor types and of 25 hp or less in Lacassine Pool.

\* \* \* \* \*

*D. Sport Fishing.*

\* \* \*

\* \* \* \* \*

5. We prohibit bank fishing from the Lacassine Pool Wildlife Drive.

\* \* \* \* \*

**Lake Ophelia National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, woodcock, snipe, rail, and mourning dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

\* \* \* \* \*

5. You must use designated parking areas to participate in any refuge public use activity.

\* \* \* \* \*

11. We prohibit transport of loaded weapons on an ATV (see § 27.42(b) of this chapter). For muzzleloaders, we define loaded as cap on primer.

\* \* \* \* \*

13. We prohibit all hunting during refuge lottery deer hunts.

\* \* \* \* \*

24. We prohibit handguns for hunting (see § 27.42 of this chapter).

*B. Upland Game Hunting.*

\* \* \*

\* \* \* \* \*

2. We allow squirrel and rabbit hunting in Hunt Unit 2B from the opening of the State season through December 10.

\* \* \* \* \*

7. We prohibit possession or distribution of bait or hunting with the aid of bait, including any grain, salt, minerals, or other feed or nonnaturally

occurring attractant on the refuge (see § 32.2(h)).

*C. Big Game Hunting.* \* \* \*

1. Conditions A1 through A3, A5 through A16, A19, A22, and B7 apply.

2. We require hunters to permanently attach their name, address, and phone number to the deer stand. Hunters may erect stands 2 days before hunting season; however, they must place stands in a nonhunting position at the conclusion of each hunt and remove them on the last day of the State archery deer season.

3. We allow archery hunting in Units 1A, 1B, 2A, and 2B subject to refuge-specific date and harvest restrictions (see refuge hunting brochure for dates).

4. We allow youth deer hunting in the closed area during the lottery youth deer season.

\* \* \* \* \*

10. We allow electric-powered or nonmotorized boats in Lake Ophelia subject to refuge-specific date restrictions (see refuge hunting brochure for details).

\* \* \* \* \*

17. We allow only turkey hunting during the first 14 days of the State season until 12 p.m. (noon).

18. We allow the use and possession of lead shot for turkey hunting.

\* \* \* \* \*

**Mandalay National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

3. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter under age 16 must remain within sight and normal voice contact of an adult age 21 or older. Each adult may supervise no more than two refuge-permitted youth hunters. We require all adult supervisors and hunters of migratory waterfowl to possess and carry a State Hunter Safety Course Certificate.

\* \* \* \* \*

5. Only one adult may occupy a blind with up to two youths during a designated Lottery Youth Waterfowl Hunt. We allow no more than three hunters to hunt from a blind at one time during any waterfowl hunt.

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

1. We open the refuge to hunting of deer and hog during the State archery season, except prior to 12 p.m. (noon) on Wednesdays and Saturdays during State waterfowl seasons, when we close

areas north of the Intracoastal Waterway to hunting of big game.

\* \* \* \* \*

3. You may take big game with archery equipment and in accordance with State law. From October 1 through October 15, State bucks-only regulations are in effect. From October 16 through February 15 you may take only one deer of either sex per day and hunters may possess only one deer. The State season limits on deer apply. There is no daily or possession limit on feral hogs.

\* \* \* \* \*

6. Conditions A3 (except that an adult may supervise only one youth), A4, and A7 apply.

*D. Sport Fishing.* \* \* \*

\* \* \* \* \*

3. We allow fishing in the refuge year-round.

4. The refuge is open from legal sunrise until legal sunset unless specifically stated otherwise.

\* \* \* \* \*

**Red River National Wildlife Refuge**

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

9. We prohibit possession or distribution of bait or hunting with the aid of bait, including any grain, salt minerals, or other feed or any nonnaturally occurring attractant on the refuge (see § 32.2(h)).

\* \* \* \* \*

**Sabine National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of light and white-fronted goose, duck, and coot on areas designated by signs stating "Waterfowl Hunting Only" and delineated in the refuge regulations and on the permit brochure map in accordance with State regulations subject to the following conditions:

1. We require all hunters to possess and carry a signed refuge permit.

2. We allow waterfowl hunting only on Wednesdays, Saturdays, and Sundays during the State teal season and during the regular State waterfowl season for the west zone.

3. We allow hunters to enter the refuge and launch boats only after 3 a.m. Shooting hours end at 12 p.m. (noon) each day.

4. All hunters born on or after September 1, 1969, must successfully complete a State-approved hunter education course and possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. For waterfowl hunts, one

adult may supervise no more than two youth hunters.

5. You may access the hunt areas via the boat launches at the West Cove Public Use Area, by vehicle on Vastar Road, and at designated turnouts within the refuge public hunt area along State Highway 27 (see § 27.31 of this chapter), unless otherwise posted. We prohibit refuge entrance through adjacent private property or using the refuge to access private property or leases.

6. We allow launching of boats on trailers only at West Cove Public Use Area. We allow hand launching of small boats along Vastar Road (no trailers permitted).

7. We prohibit dragging boats across the levee.

8. We allow operation of outboard motors only in designated refuge canals and Old North Bayou. We allow trolling motors within the refuge marshes.

9. We prohibit air-thrust boats and personal motorized watercraft (e.g., Jet Skis) unless otherwise posted.

10. You must use only portable blinds and those made of native vegetation. You must remove portable blinds, decoys, spent shells, and all other personal equipment (see §§ 27.93 and 27.94 of this chapter) each day.

11. We prohibit hunting within 50 yards (45 m) of refuge canals, waterways, public roads, buildings, above-ground oil, gas or electrical transmission facilities, or designated public facilities. Hunting parties must maintain a distance of no less than 150 yards (135 m) away from another hunter.

12. Each hunter must complete a Hunter Information Card at a self-clearing check station after each hunt and before leaving the refuge.

13. We prohibit any person or group from acting as guide, outfitter, or in any other capacity in which any other individual(s) pay or promise to pay directly or indirectly for service rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

14. We allow dogs to only locate, point, and retrieve when hunting for migratory game birds.

15. We prohibit all-terrain vehicles (ATVs) (see § 27.31(f) of this chapter).

*D. Sport Fishing.* \* \* \*

\* \* \* \* \*

4. We allow only nonmotorized boats in the 1A and 1B management units.

\* \* \* \* \*

7. Crabbing: We allow recreational crabbing in designated areas of the refuge subject to the following conditions:



i. You must take crabs only with cotton hand lines or drop nets up to 24 inches (60 cm) outside diameter. We prohibit use of floats on crab lines.

\* \* \* \* \*

8. Cast Netting: We allow cast netting in designated areas of the refuge during the Louisiana Inland Shrimp Season subject to the following conditions:

\* \* \* \* \*

ii. An adult age 21 or older must directly supervise all youths under age 18.

\* \* \* \* \*

viii. You may cast net only from the bank and wharves at Northline, Hog Island Gully, and 1A–1B Public Use Areas or at sites along Highway 27 that provide developed safe access and that we do not post and sign as closed areas.

\* \* \* \* \*

xii. We prohibit swimming and/or wading in the canals and waterways.

\* \* \* \* \*

#### **Tensas River National Wildlife Refuge**

##### *A. Migratory Game Bird Hunting.*

\* \* \* \* \*

\* \* \* \* \*

4. In areas posted “Area Closed” or “No Waterfowl Hunting Zone,” we prohibit hunting of migratory birds at any time. The Public Use Regulations brochure will be available at the refuge headquarters in July.

5. We allow shotguns equipped with a single-piece magazine plug that allows the gun to hold no more than two shells in the magazine and one in the chamber. We prohibit target practicing or shooting to unload modern firearms on the refuge at any time. Shotgun hunters must possess only an approved nontoxic shot when hunting migratory birds. Hunters must unload and encase all guns transported in automobiles and boats or on all-terrain vehicles (see § 27.42(b) of this chapter).

\* \* \* \* \*

7. We allow nonmotorized boats, electric motors, and boats with motors 10 hp or less in refuge lakes, streams, and bayous. We require that boat passengers wear personal floatation devices when using a boat to access the refuge. Hunters must equip all motorized boats with navigation lights and use them according to State regulations. We prohibit boat storage on the refuge. Hunters must remove boats daily (see § 27.93 of this chapter).

\* \* \* \* \*

10. We allow all-terrain vehicle (ATV) travel on designated trails for access typically from September 15 to the last day of the refuge squirrel season. We open designated trails from 4 a.m. to no

later than 2 hours after legal sunset unless otherwise specified. We define an ATV as an off-road vehicle (not legal for highway use) with factory specifications not to exceed the following: Weight 750 pounds (337.5 kg), length 85 inches (212.5 cm), and width 48 inches (120 cm). We restrict ATV tires to those no larger than 25 × 12 with a 1 inch (2.5 cm) lug height and maximum allowable tire pressure of 7 psi. We require an affixed refuge ATV permit that hunters may obtain from the refuge headquarters, typically in July. Hunters using the refuge physically challenged all-terrain trails must possess the State’s Physically Challenged Program Hunter Permit. Additional physically challenged access information will be available at the refuge headquarters.

11. While visiting the refuge, we prohibit: Spot lighting; littering; fires; trapping, man-drives for game; possession of alcoholic beverages; flagging, engineer’s tape, or paint; parking/blocking trail and gate entrances; and hunting within 150 feet (45 m) of a designated public road, maintained road, trail, fire breaks, dwellings, or aboveground oil and gas production facilities (see §§ 27.31(h), 27.94, 27.95(a) of this chapter, and 32.2(j)). We define a maintained road or trail as one which has been mowed, disked, or plowed and one which is free of trees.

\* \* \* \* \*

13. We prohibit field dressing of game within 150 feet (45 m) of parking areas, maintained roads, and trails.

\* \* \* \* \*

##### *B. Upland Game Hunting.*

\* \* \* \* \*

2. We allow squirrel and rabbit hunting with and without dogs. We will allow hunting with dogs from the beginning of the State season and typically stopping the day before the refuge deer muzzleloader hunt. We do not require hunters to wear hunter orange during the squirrel and rabbit hunt without dogs. Squirrel and rabbit hunting with or without dogs will resume the day after the refuge deer muzzleloader hunt and will conclude the last day of the refuge squirrel season, which typically ends February 15.

\* \* \* \* \*

5. In areas posted “Area Closed,” we prohibit upland game hunting at any time.

6. We allow .22 caliber rimfire weapons and shotguns equipped with a single-piece magazine plug that allows the gun to hold no more than two shells in the magazine and one in the chamber.

We prohibit target practicing or shooting to unload modern firearms on the refuge at any time. Shotgun hunters must possess only an approved nontoxic shot when hunting upland game. Hunters must unload and encase all guns transported in automobiles and boats or on all-terrain vehicles (see § 27.42(b) of this chapter).

7. Conditions A7, A10, A11, and A13 apply.

##### *C. Big Game Hunting.*

\* \* \* \* \*

3. We will conduct two 2-day quota modern firearms hunts for deer typically in the months of November and December. Hunt dates and permit application procedures are available at refuge headquarters in July. We prohibit hunters using a muzzleloader during this hunt.

4. We will conduct a 4-day quota youth deer hunt and a 1-day quota physically challenged deer hunt in the Greenlea Bend area typically in December and January. Hunt dates and permit application procedures will be available at the refuge headquarters in July.

\* \* \* \* \*

6. Hunters may take only one deer (one buck or one doe) per day during refuge deer hunts.

7. We allow turkey hunting during the first 16 days of the State turkey season. We will conduct a youth turkey hunt the Saturday and Sunday before the regular State turkey season. You may harvest two bearded turkeys per season. We allow the use and possession of lead shot while turkey hunting on the refuge. We allow use of nonmotorized bicycles on designated all-terrain vehicle trails. Although you may hunt turkeys without displaying a solid hunter-orange cap or vest during your turkey hunt, we do recommend its use.

8. Conditions A7, A8 (deer and turkey), A9, A10, A11, A13, A14 (deer and turkey hunters), and A15 (except that each adult may supervise no more than one youth hunter during big game hunts) apply.

9. In areas posted “Area Closed,” we prohibit big game hunting at any time. We designate “Areas Closed” on the public use regulations brochure maps, and they are closed to all hunts. We prohibit shooting into or across any closed area with a gun or archery equipment.

10. We allow shotguns equipped with a single-piece magazine plug that allows the gun to hold no more than two shells in the magazine and one in the chamber. We allow shotgun hunters to use rifled slugs only when hunting deer. We prohibit hunters using or possessing

buckshot while on the refuge. We prohibit target practicing or shooting to unload modern firearms on the refuge at any time. Hunters must unload and encase all guns transported in automobiles and boats or on all-terrain vehicles.

11. We allow muzzleloader hunters to discharge their muzzleloaders at the end of each hunt safely into the ground at least 150 feet (135 m) from any designated public road, maintained road, trail, fire breaks, dwellings, or above-ground oil and gas production facilities. We define a maintained road or trail as one which has been mowed, disked, or plowed and one which is free of trees.

12. Hunters must remove all stands, blind materials, and decoys from the refuge following each day's hunt (see § 27.93 of this chapter).

13. We require deer hunters using muzzleloaders or modern firearms to display a solid hunter-orange cap on their head and a solid hunter-orange vest over their outermost garment covering their chest and back. Hunters must display the solid hunter-orange items the entire time while in the field.

14. We require muzzleloader hunters using ground blinds in reforested areas to display hunter orange outside of the blind, which is visible from all sides of the blind.

15. We require all deer and turkey hunters to report their game immediately after each hunt at the check station nearest to the point of take.

16. We prohibit baiting or the possession of bait while on the refuge at any time. We prohibit possession of chemical baits or attractants used as bait (see § 32.2(h)).

17. We prohibit use of climbing spikes or hunting from trees that contain screw-in steps, nails, screw-in umbrellas, or any metal objects that could damage trees (see § 32.2(i)).

18. We require a Tensas River National Wildlife Refuge Access Permit for all big game hunts. Hunters may find the permits on the front of the public use regulations brochure.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow anglers to enter the refuge no earlier than 4 a.m., and they must depart no later than 2 hours after legal sunset.

2. On areas open to fishing, State creel limits and regulations apply.

3. We prohibit the taking of turtle (see § 27.21 of this chapter).

4. We allow nonmotorized boats, electric motors, and boats with motors 10 hp or less in refuge lakes, streams,

and bayous. We require that boat passengers wear personal flotation devices when using a boat to access to refuge. Anglers must equip all motorized boats with navigation lights and use them according to State regulations. We prohibit storage of boats on the refuge. Anglers must remove them daily (see § 27.93 of this chapter).

5. We allow all-terrain vehicle (ATV) travel on designated trails for access typically from September 15 to the last day of the refuge squirrel season. Designated trails are open from 4 a.m. to no later than 2 hours after legal sunset unless otherwise specified. The only exception is the Mower Woods all-terrain trail, which is open year-round with the same time restrictions as the seasonal all-terrain trails. We define an ATV as an off-road vehicle (not legal for highway use) with factory specifications not to exceed the following: Weight 750 pounds (337.5 kg), length 85 inches (212.5 cm), and width of 48 inches (120 cm). We restrict ATV tires to those no larger than 25 × 12 with a 1-inch (2.5-cm) lug height and maximum allowable tire pressure of 7 psi. We require an affixed refuge ATV permit that anglers may obtain from the refuge headquarters typically in July. Anglers using the refuge physically challenged all-terrain trails must possess the State's Physically Challenged Program Hunter Permit. Additional physically challenged access information will be available at the refuge headquarters.

6. While visiting the refuge, we prohibit: Spotlighting; littering; fires; possession of alcoholic beverages; flagging, engineer's tape, or paint; and parking/blocking trail and gate entrances (see §§ 27.31(h), 27.94, 27.95(a) of this chapter, and 32.2(j)).

7. We prohibit fish cleaning with 150 feet (45 m) of parking areas, maintained roads, and trails.

#### Upper Ouachita National Wildlife Refuge

##### *A. Migratory Game Bird Hunting.*

\* \* \*

8. We prohibit hunting within 100 feet (90 m) of the maintained rights of way of roads; from or across ATV trails (see § 27.31 of this chapter); and from aboveground oil, gas, or electrical transmission facilities.

\* \* \*

12. We prohibit any person or group from acting as a hunting guide, outfitter, or in any other capacity in which any other individual(s) pay or promise to pay directly or indirectly for service rendered to any other person or persons hunting on the refuge, regardless of

whether such payment is for guiding, outfitting, lodging, or club membership.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

\* \* \*

4. The daily bag limit is one antlered and one antlerless deer. State season limits apply.

\* \* \*

11. We prohibit possession or distribution of bait or hunting with the aid of bait, including any grain, salt, minerals, or other feed or nonnaturally occurring attractant, on the refuge (see § 32.2(h)).

\* \* \*

#### ■ 14. Amend § 32.38 Maine by:

■ a. Revising paragraphs A. and B., the introductory text of paragraph C., and paragraph C.2. of Lake Umbagog National Wildlife Refuge;

■ b. Revising paragraphs A.1., A.2., A.5., A.6., A.9., and A.10., adding paragraphs A.11. and A.12., and revising paragraphs B., C.1., C.2., C.4., C.5., C.12., C.14.i., C.14.iii., and C.14.iv. of Moosehorn National Wildlife Refuge;

■ c. Revising paragraphs A.6. and A.7., removing paragraph A.8., and revising paragraphs B.1., B.4., and C. of Rachel Carson National Wildlife Refuge; and

■ d. Revising paragraphs B. and C. of Sunkhaze Meadows National Wildlife Refuge to read as follows:

#### § 32.38 Maine.

\* \* \*

#### Lake Umbagog National Wildlife Refuge

*A. Migratory Game Bird Hunting.* We allow hunting of goose, snipe, duck, coot, and woodcock in accordance with State regulations, seasons, and bag limits subject to the following conditions:

1. Hunters must wear two articles of hunter-orange clothing or material. One article must be a solid-colored-hunter-orange hat; the other must cover a major portion of the torso, such as a jacket, vest, coat, or poncho, and must be a minimum of 50 percent hunter orange in color (e.g., orange camouflage), except when hunting waterfowl from a boat or blind or with waterfowl decoys.

2. We will provide permanent refuge blinds at various locations on the refuge that are available for public use by reservation. Hunters may make reservations for particular blinds up to 1 year in advance, for a maximum of 7 days, running Monday through Sunday during the hunting season. Hunters may make reservations for additional weeks

up to 7 days in advance, on a space-available basis. We allow no other permanent blinds. Hunters must remove temporary blinds, boats, and decoys from the refuge following each day's hunt (see § 27.93 of this chapter).

3. You may use trained dogs to assist in hunting and retrieval of harvested birds. Hunting with locating, pointing, and retrieving dogs on the refuge will be subject to the following conditions:

- i. We prohibit dog training.
- ii. We allow a maximum of two dogs per hunter.
- iii. Hunters must pick up all dogs the same day they release them.

4. We open the refuge to hunting during the hours stipulated under the State's hunting regulations but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset.

5. We prohibit night hunting. Hunters will unload all firearms outside of legal hunting hours.

6. We prohibit the use of all-terrain vehicles (ATVs or OHRVs) on refuge land.

*B. Upland Game Hunting.* We allow hunting of wild turkey, coyote (see big game) fox, raccoon, woodchuck, squirrel, porcupine, skunk, snowshoe hare, ring-necked pheasant, and ruffed grouse in accordance with State regulations, seasons, and bag limits, subject to the following conditions:

- 1. We prohibit night hunting.
- 2. You may possess only approved nontoxic shot when hunting with a shotgun (see § 32.2(k)).
- 3. We open the refuge to hunting during the hours stipulated under State hunting regulations, but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset. Hunters must unload all firearms, and no arrows outside of legal hunting hours.
- 4. We prohibit the use of all-terrain vehicles (ATVs or OHRVs) on refuge land.

5. Each hunter must wear two articles of hunter-orange clothing or material. One article must be a solid-colored hunter-orange hat; the other must cover a major portion of the torso, such as a jacket, vest, coat, or poncho and must be a minimum of 50 percent hunter orange in color (e.g., orange camouflage) except when hunting wild turkey. There is no hunter-orange requirement for wild turkey hunters.

6. We allow hunting of snowshoe hare, ring-necked pheasant, and ruffed grouse with trained dogs during State hunting seasons. Hunting with locating, pointing, and retrieving dogs on the refuge will be subject to the following conditions:

- i. We prohibit dog training.
- ii. We allow a maximum of two dogs per hunter.

iii. You must pick up all dogs the same day you release them (see § 26.21(b) of this chapter).

*C. Big Game Hunting.* We allow hunting of bear, white-tailed deer, coyote, and moose in accordance with State regulations, seasons, and bag limits subject to the following conditions:

\* \* \* \* \*

2. We allow bear and coyote hunting with dogs during State hunting seasons. Hunting with trailing (locating) dogs on the refuge is subject to the following conditions:

i. Hunters must equip all dogs used to hunt bear or coyote with working radio-telemetry collars and hunters must be in possession of a working radio-telemetry receiver that can detect and track the frequencies of all collars used.

ii. We prohibit training during or outside of dog season for bear or coyote.

iii. We allow a maximum of four dogs per hunter.

iv. You must pick up all dogs the same day you release them (see § 26.21(b) of this chapter).

\* \* \* \* \*

#### **Moosehorn National Wildlife Refuge**

##### *A. Migratory Game Bird Hunting.*

\* \* \*

1. We require every hunter to possess and carry a personally signed refuge hunting permit. Permits and regulations are available from the refuge in person during normal business hours (8 a.m. to 4:30 p.m. Monday through Friday; closed on holidays) or by contacting the Project Leader at (207) 454-7161 or by mail (Moosehorn National Wildlife Refuge, 103 Headquarters Road, Baring, Maine 04694).

2. You must annually complete a Hunter Information Card and submit it by mail or in person at the refuge headquarters no later than 2 weeks after the close of the hunting season in March. If you do not comply with this requirement, we may suspend your future hunting privileges on Moosehorn National Wildlife Refuge.

\* \* \* \* \*

5. You may hunt waterfowl (duck and goose) in that part of the Edmunds Division that lies north of Hobart Stream and west of U.S. Route 1, and in those areas east of U.S. Route 1, and refuge lands that lie south of South Trail; and in that portion of the Baring Division that lies west of State Route 191.

6. We prohibit hunting waterfowl in the Nat Smith Field and Marsh or Bills Hill Field or Ponds on the Edmunds Division.

\* \* \* \* \*

9. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

10. You must remove portable or temporary blinds and decoys from the refuge following each day's hunt (see §§ 27.93 and 27.94 of this chapter).

11. We prohibit use of motorized or mechanized vehicles and equipment in designated Wilderness Areas. This includes all vehicles and items such as winches, pulleys, and wheeled game carriers. You must remove animals harvested within the Wilderness Areas by hand without the aid of mechanical equipment of any type.

12. During the firearms deer and moose seasons, you must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 cm<sup>2</sup>) of solid-colored-hunter-orange clothing or material. However, waterfowl hunters are not required to wear hunter-orange clothing or material while hunting from a boat, blind, or in conjunction with waterfowl decoys.

*B. Upland Game Hunting.* We allow hunting of ruffed grouse, snowshoe hare, red fox, gray and red squirrel, raccoon, skunk, and woodchuck on designated areas of the Edmunds Division and that part of the Baring Division that lies west of State Route 191 in accordance with State regulations, seasons, and bag limits, subject to the following conditions:

1. Conditions A1, A2, A9, A11, and A12 apply.

2. We allow hunters to enter the refuge 2 hours before legal shooting hours, and they must exit the refuge by 1 hour past legal shooting hours, except for hunters pursuing raccoons at night.

3. We prohibit hunting of upland game species listed in the introductory text of this paragraph B. on refuge lands between April 1 and September 30.

4. You must register with the refuge office prior to hunting raccoon or red fox with trailing dogs.

##### *C. Big Game Hunting.* \* \* \*

1. Conditions A1, A2, A11, and A12 apply.

2. We allow hunters to enter the refuge 2 hours before legal shooting hours, and they must exit the refuge by 1 hour past legal shooting hours, except for hunters pursuing eastern coyotes at night.

\* \* \* \* \*

4. We allow eastern coyote hunting from October 1 to March 31.

5. If you harvest a bear, deer, moose, or coyote on the refuge, you must notify the refuge office in person or by phone within 24 hours and make the animal

available for inspection by refuge personnel.

\* \* \* \* \*

12. We prohibit use of firearms to hunt bear and coyote during the archery deer season on that part of the Baring Division that lies east of Route 191. We prohibit the use of firearms, other than a muzzleloader, to hunt bear and coyote during the deer muzzleloader season on that part of the Baring Division that lies east of Route 191.

\* \* \* \* \*

14. \* \* \*

ii. The North Magurrewack Area: The boundary of this area begins where the northern exterior boundary of the refuge and Route 1 intersect; it follows the boundary line in a westerly direction to the railroad grade where it follows the main railroad grade and refuge boundary in a southwest direction to the upland edge of the Lower Barn Meadow Marsh; then it follows the upland edge of the marsh in a southerly direction to U.S. Route 1 where it follows Route 1 to the point of origin.

iii. The posted safety zone around the Refuge Headquarters Complex: The boundary of this area starts where the southerly edge of the Horse Pasture Field intersects with the Charlotte Road. The boundary follows the southern edge of the Horse Pasture Field, across the abandoned Maine Central Railroad grade, where it intersects with the North Fireline Road. It follows the North Fireline Road to a point near the northwest corner of the Lane Construction Tract. The line then proceeds along a cleared and marked trail in a northwesterly direction to the Barn Meadow Road. It proceeds south along the Barn Meadow Road to the intersection with the South Fireline Road, where it follows the South Fireline Road to the Headquarters Road. It follows the Headquarters Road in a southerly direction to the Two Mile Meadow Road. It follows the westerly side of the Two Mile Meadow Road to the intersection with the Mile Bridge Road. It then follows Mile Bridge Road to the intersection with the Lunn Road, then along the Lunn Road leaving the road in an easterly direction at the site of the old crossing, across the abandoned Maine Central Railroad grade to the Charlotte Road (directly across from the Moosehorn Ridge Road gate). The line follows the Charlotte Road in a northerly direction to the point of origin.

iv. The Southern Gravel Pit: The boundary of this area starts at a point where Cranberry Brook crosses the Charlotte Road and proceeds south along the Charlotte Road to the Baring/

Charlotte Town Line, east along the Town Line to a point where it intersects the railroad grade where it turns in a northerly direction, and follows the railroad grade to Cranberry Brook, following Cranberry Brook in a westerly direction to the point of origin.

\* \* \* \* \*

#### Rachel Carson National Wildlife Refuge

##### A. Migratory Game Bird Hunting.

\* \* \*

\* \* \* \* \*

6. We open the refuge to hunting during the hours stipulated by State regulations. We close the refuge to night hunting.

7. We close the Moody, Little River, Biddeford Pool, and Goosefare Brook divisions of the refuge to all migratory bird hunting.

##### B. Upland Game Hunting. \* \* \*

1. Conditions A1 and A6 apply.

\* \* \* \* \*

4. We close the Moody, Little River, and Biddeford Pool divisions of the refuge to all upland game hunting.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the Brave Boat Harbor, Lower Wells, Upper Wells, Mousam River, Goose Rocks, Little River, Goosefare Brook, and Spurwink River divisions of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A4, and A6 apply.

2. We allow hunting of deer with shotgun and archery only. We prohibit rifles and muzzleloading firearms.

3. We allow portable tree stands and ladders only (see § 32.2(i) of this chapter).

4. We close the Moody and Biddeford Pool divisions of the refuge to white-tailed deer hunting.

5. We allow archery on only those areas of the Little River division open to hunting.

6. We allow hunting of fox and coyote with archery or shotgun only during daylight hours of the State firearm deer season.

7. You must report any deer harvested to the refuge office within 48 hours.

\* \* \* \* \*

#### Sunkhaze Meadows National Wildlife Refuge

\* \* \* \* \*

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Shotgun hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).

2. We allow eastern coyote hunting from October 1 to March 31.

3. We allow hunters to enter the refuge ½ hour before legal shooting hours, and they must exit the refuge by ½ hour after legal shooting hours, except for hunters pursuing eastern coyotes at night.

C. Big Game Hunting. We allow hunting of black bear, bobcat, moose, and white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. During firearms big game seasons, you must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 cm<sup>2</sup>) of solid-colored-hunter-orange clothing or material.

2. We allow hunters to enter the refuge ½ hour before legal shooting hours, and they must exit the refuge by ½ hour past legal shooting hours.

3. We allow bear hunting from October 1 to the end of the State prescribed season. We prohibit use of bait during the hunting of bears.

\* \* \* \* \*

#### ■ 15. Amend § 32.42 Minnesota by:

■ a. Revising paragraph C. of Agassiz National Wildlife Refuge;

■ b. Revising Big Stone National Wildlife Refuge;

■ c. Revising paragraphs A.2. and A.6. of Minnesota Valley National Wildlife Refuge; and

■ d. Revising Northern Tallgrass Prairie National Wildlife Refuge to read as follows:

#### § 32.42 Minnesota.

\* \* \* \* \*

#### Agassiz National Wildlife Refuge

\* \* \* \* \*

C. Big Game Hunting. We allow hunting of white-tailed deer and moose on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We are currently closed to moose hunting until the population recovers.

2. We will allow a youth hunt only (age 16 and under). Youth hunters age 14 and under must be accompanied by an adult age 18 or older.

3. We allow scouting the day before the youth deer hunt and the deer firearms hunt.

4. We open archery hunting at the start of the State's deer firearms season and close according to the State's archery deer season.

5. We allow muzzleloader deer hunting following the State's muzzleloader season.

6. Hunters may use portable stands. We prohibit construction or use of

permanent blinds, permanent platforms, or permanent ladders.

7. You must remove all stands and personal property from the refuge by legal sunset of each day (see §§ 27.93 and 27.94 of this chapter).

8. We prohibit hunters from occupying illegally set up or constructed ground and tree stands (see condition C7).

9. We allow the use of wheeled, nonmotorized conveyance devices (e.g., bikes, retrieval carts) except in Wilderness Areas.

10. We prohibit vehicles and hunters from entering the refuge during the youth deer hunt until after 6 a.m.

11. We prohibit the use of motorized boats.

12. We prohibit the use of snowmobiles and ATVs.

13. We prohibit camping.

\* \* \* \* \*

### Big Stone National Wildlife Refuge

*A. Migratory Game Bird Hunting.* We prohibit the hunting of migratory game birds. We allow the unarmed retrieval of waterfowl, legally taken outside the refuge, up to 100 yards (90 m) inside the refuge boundary.

*B. Upland Game Hunting.* We allow hunting of ring-necked pheasant, Hungarian partridge, rabbit (cottontail and jack), squirrel (fox and gray), raccoon, fox (red and gray), and striped skunk on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Shotgun hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).

2. We allow the use of hunting dogs for upland game bird hunting only, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season (see § 26.21(b) of this chapter).

3. We prohibit the use of dogs for hunting furbearers.

4. You may only hunt fox, raccoon, and striped skunk from 1/2 hour before legal sunrise until legal sunset from September 1 through the last day of February.

5. We allow nonmotorized boats and boats using electric motors only in the Minnesota River channel. We prohibit boats on all other refuge waters.

6. We prohibit camping.

*C. Big Game Hunting.* We allow hunting of deer and turkey on designated areas in accordance with State regulations subject to the following conditions:

1. We allow the use of temporary stands, blinds, platforms, or ladders. Hunters may construct blinds using manmade materials only. We prohibit

hunters bringing plants or their parts onto the refuge.

2. We prohibit the construction or use of permanent blinds, stands, or scaffolds (see § 27.92 of this chapter).

3. You must remove all stands, temporary blinds, platforms, ladders, materials brought onto the refuge, and other personal property from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

4. Turkey hunters may possess only approved nontoxic shot while in the field.

5. Conditions B5 and B6 apply.

*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B5 and B6 apply.

2. You must remove all ice fishing structures, devices, and personal property from the refuge following each day's fishing activity (see §§ 27.93 and 27.94 of this chapter).

3. We allow only bank fishing on all refuge pools and open marshes.

\* \* \* \* \*

### Minnesota Valley National Wildlife Refuge

*A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

2. We prohibit the use of motorized boats. We allow nonmotorized boats in areas open to waterfowl hunting during the waterfowl hunting seasons.

\* \* \* \* \*

6. We prohibit entry to hunting areas earlier than 2 hours before legal shooting hours, and all hunters must exit within 2 hours after the close of the legal shooting hours.

\* \* \* \* \*

### Northern Tallgrass Prairie National Wildlife Refuge

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, rail (Virginia and sora only), woodcock, common snipe, and mourning dove in accordance with State regulations subject to the following conditions:

1. Hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).

2. Hunters may construct temporary blinds using manmade materials only (see § 27.92 of this chapter). We prohibit hunters from bringing plants or their parts onto the refuge.

3. We prohibit the construction or use of permanent blinds, stands, scaffolds, and ladders.

4. We prohibit hunters from leaving boats, decoys, or other personal property unattended at any time (see §§ 27.93 and 27.94 of this chapter).

5. Hunters must remove boats, decoys, portable or temporary blinds, materials brought onto the refuge, and other personal property at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

6. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season (see § 26.21(b) of this chapter).

7. We prohibit the use of motorized watercraft.

8. We prohibit camping.

*B. Upland Game Hunting.* We allow hunting of ring-necked pheasant, Hungarian partridge, rabbit (cottontail and jack), squirrel (fox and gray), raccoon, opossum, fox (red and gray), badger, coyote, striped skunk, and crows on designated areas in accordance with State regulations subject to the following conditions:

1. Shotgun hunters may possess only approved nontoxic shot while in the field (see § 32.3(k)).

2. We allow the use of dogs for upland game bird hunting only, provided that the dogs remain under the immediate control of the hunter at all times, during the State-approved hunting season (see § 26.21(b) of this chapter).

3. We prohibit the use of dogs for hunting furbearers.

4. We close the refuge to all hunting from March 1 through August 31.

5. We allow hunting for coyote, striped skunk, raccoon, and fox from 1/2 hour before legal sunrise to legal sunset.

6. Conditions A7 and A8 apply.

*C. Big Game Hunting.* We allow hunting of deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow the use of temporary stands, blinds, platforms, or ladders (see § 27.92 of this chapter). Hunters may construct blinds using manmade materials only. We prohibit hunters from bringing plants or their parts onto the refuge.

2. Conditions A3, A5, A7, and A8 apply.

3. Turkey hunters may possess only approved nontoxic shot while in the field.

*D. Sport Fishing.* [Reserved]

\* \* \* \* \*

- 16. Amend § 32.43 Mississippi by:
  - a. Revising paragraphs A.15., C.4., and C.12., and adding paragraph D.8. of Hillside National Wildlife Refuge;
  - b. Adding Holt Collier National Wildlife Refuge;
  - c. Adding paragraph A.18., revising paragraphs B.1., C.4., C.8., and adding paragraph D.4. of Mathews Brake National Wildlife Refuge;

- d. Revising paragraph A.15., B.1., B.6., C.14., C.18., and adding paragraph D.9. of Morgan Brake National Wildlife Refuge;
- e. Revising paragraphs A., B., and C. of Noxubee National Wildlife Refuge;
- f. Revising paragraphs A.17., B.1., C.21., D.1., and D.6. of Panther Swamp National Wildlife Refuge; and
- g. Revising paragraphs B.4. and C.13. of Yazoo National Wildlife Refuge to read as follows:

#### § 32.43 Mississippi.

\* \* \* \* \*

#### Hillside National Wildlife Refuge

##### A. Migratory Game Bird Hunting.

\* \* \* \* \*

\* \* \* \* \*

15. We allow ATVs only on designated trails (see § 27.31 of this chapter) (see refuge brochure map). We restrict ATV tires to a maximum of 1 inch (2.5 cm) for both tread depth and lug height.

\* \* \* \* \*

##### C. Big Game Hunting. \* \* \*

\* \* \* \* \*

4. Conditions A5 through A7, A15, and B6 apply.

\* \* \* \* \*

12. You must dismantle blinds and tripods, and you must remove stands from the tree each day (see §§ 27.93 and 27.94 of this chapter).

\* \* \* \* \*

##### D. Sport Fishing. \* \* \*

\* \* \* \* \*

8. Condition A15 applies.

#### Holt Collier National Wildlife Refuge

##### A. Migratory Game Bird Hunting. [Reserved]

B. Upland Game Hunting. We allow hunting of rabbit and furbearers on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We are open for hunting during the State season.

2. We allow shotguns only with approved nontoxic shot (see § 32.2(k)) and .22 caliber rimfire rifles for taking small game (we prohibit .22 caliber magnums).

3. We allow dogs only for rabbit hunting February 1 through 28.

4. During the rabbit-with-dog and quail hunts, any person hunting or accompanying another person hunting must wear at least 500 square inches (3,250 cm<sup>2</sup>) of unbroken fluorescent orange material visible above the waistline as an outer garment.

5. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth

hunter must remain within sight and normal voice contact of an adult age 21 or older. Each hunter age 16 and older must possess and carry a valid signed refuge Public Use Permit certifying that he or she understands and will comply with all regulations. One adult may supervise no more than one youth hunter.

6. Each day before hunting, all hunters must obtain a daily User Information Card (pink) available at the hunter information stations (see refuge brochure map) and follow the printed instructions on the card. You must display this card in plain view on the dashboard of your vehicle while hunting or fishing so that the personal information is readable. Prior to leaving the refuge, you must complete the reverse side of the card and deposit it at one of the refuge information stations.

7. Failure to display the User Information Card will result in the loss of the hunter's refuge annual Public Use Permit.

8. We prohibit the possession of alcoholic beverages (see § 32.2(j)).

9. We prohibit the possession of plastic flagging tape.

10. We prohibit handguns.

11. You must unload and case guns (see § 27.42(b) of this chapter) transported in/on vehicles and boats under power.

12. You must park vehicles in such a manner as to not obstruct roads, gates, turnrows, or firelanes (see § 27.31(h) of this chapter).

13. Valid permit holders may take the following furbearers in season incidental to other refuge hunts with legal firearms used for that hunt: raccoon, opossum, coyote, beaver, bobcat, and nutria.

14. We prohibit horses and mules.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B5 through B12 and B14 apply.

2. Hunts and hunt dates are available at the refuge headquarters in July, and we post them in the refuge brochure.

3. We allow archery hunting October 1 through January 31.

4. We prohibit organized drives for deer.

5. We allow crossbows only in accordance with State law.

6. We prohibit attaching stands to any power or utility pole.

7. You must dismantle blinds and tripods, and you must remove stands from the tree each day (see §§ 27.93 and 27.94 of this chapter).

D. Sport Fishing. [Reserved]

#### Mathews Brake National Wildlife Refuge

##### A. Migratory Game Bird Hunting.

\* \* \*

\* \* \* \* \*

18. Beginning the day before duck season opens and ending the last day of duck season, we will close refuge waters to all public use from 1 p.m. until 12 a.m. (midnight).

##### B. Upland Game Hunting. \* \* \*

1. Conditions A4 and A18 apply.

\* \* \* \* \*

##### C. Big Game Hunting. \* \* \*

\* \* \* \* \*

4. Conditions A7 through A9, A18, and B5 apply.

\* \* \* \* \*

8. You must dismantle blinds and tripods, and you must remove stands from the tree each day (see §§ 27.93 and 27.94 of this chapter).

##### D. Sport Fishing. \* \* \*

\* \* \* \* \*

4. Condition A18 applies.

#### Morgan Brake National Wildlife Refuge

##### A. Migratory Game Bird Hunting.

\* \* \*

\* \* \* \* \*

15. We only allow ATVs on designated trails (see § 27.31 of this chapter) (see refuge brochure map). We restrict ATV tires to a maximum of 1 inch (2.5 cm) for both tread depth and lug height.

\* \* \* \* \*

##### B. Upland Game Hunting. \* \* \*

1. Conditions A1 and A5 (and we allow only one adult per youth hunter), and A6 through A15 apply.

\* \* \* \* \*

6. We prohibit horses and mules.

##### C. Big Game Hunting. \* \* \*

\* \* \* \* \*

14. You must dismantle blinds and tripods, and you must remove stands from the tree each day (see §§ 27.93 and 27.94 of this chapter).

\* \* \* \* \*

18. Conditions A5 through A7, A15, and B6 apply.

##### D. Sport Fishing. \* \* \*

\* \* \* \* \*

9. Condition A15 applies.

#### Noxubee National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, woodcock, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require permits for waterfowl hunting, and only two companions may accompany each permit holder.

2. There is no early teal season.

3. We allow waterfowl hunting from ½ hour before legal sunrise until 12 p.m. (noon) on Saturdays and Wednesdays.

4. Hunters must remove all decoys, blind material, and harvested waterfowl from the area no later than 12 p.m. (noon) each day (see §§ 27.93 and 27.94 of this chapter).

5. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older.

6. Each day all waterfowl hunters must check in and out at the refuge's duck check station.

7. We prohibit possession of alcoholic beverages (see § 32.2(j)).

8. We prohibit handguns.

9. Waterfowl hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).

10. We prohibit leaving boats overnight on the refuge (see § 29.93 of this chapter).

11. During the deer firearm hunts, any person hunting woodcock or accompanying another person hunting must wear at least 500 square inches (3,250 cm<sup>2</sup>) of unbroken fluorescent-orange material visible above the waistline as an outer garment.

**B. Upland Game Hunting.** We allow hunting of squirrel, rabbit, quail, opossum, raccoon, coyote, beaver, and nutria on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit upland game hunting within the designated areas for waterfowl hunting when this hunt is taking place.

2. We only allow shotguns with approved nontoxic shot for hunting upland game in greentree reservoirs 1, 2, and 4.

3. We only allow shotguns with a shot size no larger than No. 2 and rifles no larger than a standard .22 caliber for taking upland game (we prohibit .22 caliber magnums).

4. We allow dogs for rabbit and squirrel hunting only beginning on the first day after the last refuge deer hunt.

5. We allow the use of dogs for raccoon and opossum hunting between the hours of legal sunset and legal sunrise.

6. During the deer firearm hunts, any person hunting upland game or accompanying another person hunting must wear at least 500 square inches (3,200 cm<sup>2</sup>) of unbroken fluorescent-orange material visible above the waistline as an outer garment.

7. Conditions A5, A7, A8, and A10 apply.

8. We prohibit horses and mules.

9. We prohibit hunting or entry into areas designated as being "closed" (see refuge brochure map).

10. We require hunters to obtain a refuge hunt permit brochure. This permit must be signed by them and in their possession at all times while hunting on the refuge.

11. Valid permit holders may take the following animals in season incidental to other upland game hunts with legal firearms used for that hunt: Coyote, beaver, nutria, and feral hog.

**C. Big Game Hunting.** We allow hunting of white-tailed deer, feral hog, and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A5, A7, A8, A10, B8, and B9 apply.

2. Hunts and hunt dates are available at refuge headquarters in July, and we identify them in the refuge brochure.

3. We require a fee permit for all refuge deer hunts. Hunters must sign this permit and have it in their possession at all times while hunting.

4. We prohibit organized drives for deer.

5. You may place portable stands on the refuge from September 1 through January 15 and must remove them by January 15.

6. Valid deer permit holders may also take feral hogs and coyotes while deer hunting.

7. We do not require turkey hunters to use nontoxic shot in greentree reservoirs 1, 2, and 4.

8. We prohibit big game hunting in the area designated for waterfowl hunting when this hunt is taking place.

\* \* \* \* \*

#### **Panther Swamp National Wildlife Refuge**

##### **A. Migratory Game Bird Hunting.**

\* \* \*  
\* \* \* \* \*

17. We allow ATVs, beginning the third Saturday in September through February 28, only on designated trails (see § 27.31 of this chapter) (see refuge brochure map). We restrict ATV tires to a maximum of 1 inch (2.5 cm) for both tread depth and lug height.

##### **B. Upland Game Hunting.**

1. We allow hunting during the open State season except we close during only limited refuge gun and muzzleloader deer hunts. You may obtain information on the hunts and hunt dates both at the refuge headquarters in July and in the refuge brochure.

\* \* \* \* \*

##### **C. Big Game Hunting.**

\* \* \* \* \*

21. You must dismantle blinds and tripods, and you must remove stands from the tree each day (see §§ 27.93 and 27.94 of this chapter).

\* \* \* \* \*

##### **D. Sport Fishing.**

1. We close all refuge waters during limited deer gun and muzzleloader hunts.

\* \* \* \* \*

6. We allow ATVs for fishing access on designated gravel roads when we close such roads to vehicular traffic. We restrict ATV tires to a maximum of 1 inch (2.5 cm) of both tread depth or lug height.

\* \* \* \* \*

#### **Yazoo National Wildlife Refuge**

\* \* \* \* \*

##### **B. Upland Game Hunting.**

\* \* \* \* \*

4. We prohibit horses and mules.

\* \* \* \* \*

##### **C. Big Game Hunting.**

\* \* \* \* \*

13. Stands adjacent to fields and tree plantations must be a minimum of 10 feet (3 m) above the ground. We prohibit attaching stands to any power or utility pole. You must dismantle blinds and tripods, and you must remove stands from the tree each day (see §§ 27.93 and 27.94 of this chapter).

\* \* \* \* \*

- 17. Amend § 32.44 Missouri by:
- a. Revising paragraphs C.4., C.5., C.6., C.7., and adding paragraphs C.8. and D.3. of Clarence Cannon National Wildlife Refuge;
- b. Revising Great River National Wildlife Refuge; and
- c. Revising paragraph A.1., adding paragraphs A.4., and A.5., revising paragraphs B.1., B.7. and B.8., removing paragraph B.9., revising paragraphs C.1., C.2., C.4. through C.9., D.4., and D.6. of Mingo National Wildlife Refuge to read as follows:

#### **§ 32.44 Missouri.**

\* \* \* \* \*

#### **Clarence Cannon National Wildlife Refuge**

\* \* \* \* \*

##### **C. Big Game Hunting.**

\* \* \* \* \*

4. We prohibit the construction or use of permanent blinds, stands, platforms, or scaffolds (see § 27.92 of this chapter).

5. Hunters must remove all boats, blinds, blind materials, stands, platforms, scaffolds, and other hunting equipment (see §§ 27.93 and 27.94 of



this chapter) from the refuge at the end of each day's hunt.

6. We close the area south of Bryants Creek to deer hunting.

7. We require hunters to check in all harvested deer with refuge personnel prior to leaving the refuge.

8. You must park all vehicles in designated parking areas (see § 27.31 of this chapter).

*D. Sport Fishing.* \* \* \*

\* \* \* \* \*

3. Anglers must remove all boats and fishing equipment at the end of each day's fishing activity (see § 27.92 of this chapter).

### Great River National Wildlife Refuge

*A. Migratory Game Bird Hunting.* We allow hunting of waterfowl and coot on the Long Island Division of the refuge in accordance with State regulations subject to the following condition: We allow hunting blinds constructed only on sites posted by the Illinois Department of Natural Resources.

*B. Upland Game Hunting.* We allow hunting of upland game species on Long Island and Fox Island Divisions of the refuge in accordance with State regulations subject to the following conditions:

1. We open Long Island and Fox Island Divisions for upland game hunting only from ½ hour before legal sunrise until ½ hour after legal sunset.

2. We close Fox Island Division to all upland game hunting from October 16 through December 31.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated portions of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit construction or use of permanent blinds, platforms, or ladders (see § 27.92 of this chapter).

2. Hunters must remove all portable hunting stands, blinds, and equipment from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

3. On the Fox Island Division, we allow deer hunting only during the "Antlerless-Only" portion of the State firearms deer season.

4. On the Delair Division, we allow muzzleloader deer hunting only subject to the following conditions:

i. You must possess and carry a refuge permit.

ii. We require hunters to check in and out of the refuge each day.

iii. We require hunters to record all harvested deer with refuge staff before removing them from the refuge.

iv. Shooting hours end at 3:00 p.m. each day.

v. Hunters must park all vehicles only in designated parking areas (see § 27.31 of this chapter).

5. We allow turkey hunting only on the Fox Island Division during the State spring seasons, including youth season. We do not open to fall turkey hunting.

*D. Sport Fishing.* We allow fishing on the Long Island and Fox Island Divisions of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit the taking of turtle and frog (see § 27.21 of this chapter).

2. On the Fox Island Division, we allow bank fishing only along any portion of the Fox River from January 1 through October 15.

\* \* \* \* \*

### Mingo National Wildlife Refuge

*A. Migratory Game Bird Hunting.*

\* \* \*

1. We allow the use of hunting dogs, provided the dogs are under the immediate control of the hunter at all times (see § 26.21(b) of this chapter).

\* \* \* \* \*

4. You must remove boats, decoys, blinds, and blind materials brought onto the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

5. We prohibit the construction or use of permanent blinds, stands, or scaffolds (see § 27.92 of this chapter).

*B. Upland Game Hunting.* \* \* \*

1. The Public Hunting Area and the road leading to the Public Hunting Area from the Hunter Sign-In Station are open 1½ hours before legal sunrise until 1½ hours after legal sunset.

\* \* \* \* \*

7. We require that all squirrel hunters wear a hat and also a shirt, vest, or coat of hunter orange so that the color is plainly visible from all sides during the overlapping portion of the squirrel and archery deer and turkey seasons. Camouflage orange does not satisfy this requirement.

8. Condition A3 applies.

*C. Big Game Hunting.* \* \* \*

1. Conditions A3 and B1 apply.

2. We require that all hunters register at the Hunter Sign-In/Sign Out Stations and record the number of hours hunted and number of deer or turkey harvested.

\* \* \* \* \*

4. You must remove all boats brought onto the refuge at the end of each day (see § 27.93 of this chapter).

5. We require that all archery deer and turkey hunters must wear a hat and also a shirt, vest, or coat of hunter orange so that the color is plainly visible from all sides during the overlapping portion of the squirrel and archery deer and turkey seasons. Camouflage orange does not satisfy this requirement.

6. We allow spring turkey hunting. We allow only shotguns with approved nontoxic shot (see § 32.2(k)).

7. We prohibit the use of salt or mineral blocks.

8. We allow portable tree stands only from 2 weeks before to 2 weeks after the State archery deer season. You must clearly mark all stands with the owner's name, address, and phone number.

9. We allow only one tree stand per deer hunter.

*D. Sport Fishing.* \* \* \*

\* \* \* \* \*

4. Anglers must remove watercraft (see § 27.93 of this chapter) from the refuge at the end of each day's fishing activity.

\* \* \* \* \*

6. Anglers must attend trammel and gill nets at all times and plainly label them with the owner's name, address, and phone number.

\* \* \* \* \*

■ 18. Amend § 32.45 Montana by:

■ a. Adding Benton Lake Wetland Management District in alphabetical order;

■ b. Adding paragraph A.3., and revising paragraphs B.3. and C. of Black Coulee National Wildlife Refuge;

■ c. Adding Bowdoin Wetland Management District in alphabetical order;

■ d. Adding Charles M. Russell Wetland Management District in alphabetical order;

■ e. Revising paragraphs A., B., and C. of Creedman Coulee National Wildlife Refuge;

■ f. Adding paragraph A.3. and revising paragraphs B. and C. of Hewitt Lake National Wildlife Refuge;

■ g. Revising paragraphs A., B., and C. of Lake Thibadeau National Wildlife Refuge;

■ h. Revising paragraphs A.1., A.2., adding paragraph A.16., and revising paragraph C.4. of Lee Metcalf National Wildlife Refuge;

■ i. Adding Northeast Montana Wetland Management District in alphabetical order; and

■ j. Adding Northwest Montana Wetland Management District in alphabetical order to read as follows:

### § 32.45 Montana.

\* \* \* \* \*

### Benton Lake Wetland Management District

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on Waterfowl Production Areas (WPA) throughout the District, excluding Sands WPA in Hill County and H-2-0 WPA in Powell County, in accordance with State

regulations subject to the following conditions:

1. We prohibit the use of motorboats.
2. You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction at the end of each day (see §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow upland game hunting on WPAs throughout the District, excluding Sands WPA in Hill County and H-2-0 WPA in Powell County, in accordance with State regulations subject to the following conditions:

1. Hunters may possess only approved nontoxic shot (see § 32.2(k)).
2. We prohibit the use of horses for any purposes.

*C. Big Game Hunting.* We allow big game hunting on WPAs throughout the District, excluding Sands WPA in Hill County and H-2-0 WPA in Powell County, in accordance with State regulations subject to the following condition: Condition B2 applies.

*D. Sport Fishing.* We allow sport fishing on WPAs throughout the District in accordance with State regulations subject to the following conditions:

1. Condition A1 applies.
2. You must remove boats, fishing equipment, and other personal property at the end of each day (see §§ 27.93 and 27.94 of this chapter).

#### **Black Coulee National Wildlife Refuge**

##### *A. Migratory Game Bird Hunting.*

\* \* \*

3. A portion of the land within the refuge boundary is private land (inholding); persons wishing to hunt the private land must gain permission from the landowner.

##### *B. Upland Game Hunting.* \* \* \*

\* \* \*

3. Condition A3 applies.

*C. Big Game Hunting.* We allow big game hunting on designated portions of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunters to leave portable tree stands, portable blinds, and freestanding elevated platforms on the refuge from August 15 to December 15.

2. You must visibly mark portable tree stands, portable blinds, and freestanding elevated platforms with your automated licensing system (ALS) number.

3. You must remove any other personal property brought onto the area at the end of each day (see §§ 27.93 and 27.94 of this chapter).

4. Condition A3 applies.

\* \* \*

#### **Bowdoin Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on all Waterfowl Production Areas (WPA) (except Holm WPA) throughout the District in accordance with State regulations subject to the following conditions:

1. We prohibit use of motorboats.
2. You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction at the end of each day (see §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow upland game hunting on all WPAs (except Holm WPA) throughout the District in accordance with State regulations subject to the following condition: Hunters may possess only approved nontoxic shot (see § 32.2(k)).

*C. Big Game Hunting.* We allow big game hunting on all WPAs (except Holm WPA) throughout the District in accordance with State regulations subject to the following conditions:

1. We allow portable tree stands, portable blinds, and freestanding elevated platforms to be left on WPAs from August 15 to December 15.
2. You must label portable tree stands, portable blinds, and freestanding elevated platforms with your automated licensing system (ALS) number. The label must be legible from the ground.
3. You must remove any other personal property brought onto the area at the end of each day (see §§ 27.93 and 27.94 of this chapter).

4. We allow the use of only archery, muzzleloader (as defined by State regulations), or shotgun on the McNeil Slough WPA.

*D. Sport Fishing.* We allow sport fishing on WPAs throughout the District in accordance with State regulations subject to the following conditions:

1. We prohibit use of motorboats.
2. You must remove boats, fishing equipment, and other personal property at the end of each day (see §§ 27.93 and 27.94 of this chapter).

#### **Charles M. Russell Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on all Waterfowl Production Areas (WPA) in accordance with State regulations subject to the following condition: You must remove all watercraft and personal equipment following each day of hunting (see §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow only upland game bird hunting on all WPAs in accordance with State

regulations subject to the following condition: Hunters may possess only approved nontoxic shot (see § 32.2(k)).

*C. Big Game Hunting.* We allow big game hunting on all WPAs in accordance with State regulations subject to the following conditions:

1. All tree stands must be visibly marked and identified with the hunter's name, address, phone number, and ALS number. Hunters must remove all tree stands no later than December 15 of each year.

2. We prohibit permanent stands, ladders, steps, screw-in spikes, nails, screws, and wire (see § 32.2(i)).

*D. Sport Fishing.* We allow sport fishing on all WPAs in accordance with State regulations subject to the following condition: Anglers must remove all motor boats and other personal equipment at the end of each day (see §§ 27.93 and 27.94 of this chapter).

#### **Creedman Coulee National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, swan, sandhill crane, and mourning dove on designated areas of the refuge in accordance with State regulations subject to the following condition:

1. Most of the land within the refuge boundary is private land (inholding); persons wishing to access the private land must gain permission from the landowner.

*B. Upland Game Hunting.* We allow hunting of pheasant, sharp-tailed grouse, sage grouse, gray partridge, fox, and coyote on designated areas of the refuge in accordance with State regulations subject to the following condition: Condition A1 applies.

*C. Big Game Hunting.* We allow big game hunting on designated areas of the refuge in accordance with State regulations subject to the following condition: Condition A1 applies.

\* \* \*

#### **Hewitt Lake National Wildlife Refuge**

##### *A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \*

3. A portion of the land within the refuge boundary is private land (inholding); persons wishing to hunt the private land must gain permission from the landowner.

*B. Upland Game Hunting.* We allow hunting of pheasant, sharp-tailed grouse, sage grouse, gray partridge, fox, and coyote on designated portions of the refuge in accordance with State regulations subject to the following conditions:

1. You may possess only approved nontoxic shot (see § 32.2(k)).

2. Fox and coyote hunters may use only centerfire rifles, rim-fire rifles, or shotguns with approved nontoxic shot.

3. We prohibit the shooting or taking of prairie dogs.

4. Condition A3 applies.

*C. Big Game Hunting.* We allow big game hunting on designated portions of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunters to leave portable tree stands, portable blinds, and freestanding elevated platforms on the refuge from August 15 to December 15.

2. You must visibly mark portable tree stands, portable blinds, and freestanding elevated platforms with your automated licensing system (ALS) number.

3. You must remove any other personal property brought onto the area at the end of each day (see §§ 27.93 and 27.94 of this chapter).

4. Condition A3 applies.

\* \* \* \* \*

#### Lake Thibadeau National Wildlife Refuge

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, swan, sandhill crane, and mourning dove in designated areas of the refuge in accordance with State regulations subject to the following condition:

1. Most of the land within the refuge boundary is private land (inholding); persons wishing to hunt the private land must gain permission from the landowner.

*B. Upland Game Hunting.* We allow hunting of pheasant, sharp-tailed grouse, sage grouse, gray partridge, fox, and coyote on designated areas of the refuge in accordance with State regulations subject to the following condition: Condition A1 applies.

*C. Big Game Hunting.* We allow big game hunting on designated areas of the refuge in accordance with State regulations subject to the following condition: Condition A1 applies.

\* \* \* \* \*

#### Lee Metcalf National Wildlife Refuge

*A. Migratory Game Bird Hunting.*

\* \* \*

1. Hunting Access: We have numbered the blinds and assigned them to a single access point designated in the refuge hunting leaflet. Hunters must park at this access point and at the numbered parking space corresponding to a blind. Hunters must walk to the blind along mowed trails designated in the hunting leaflet. We open the access point at 3:30 a.m. to hunters who intend

to immediately hunt on the refuge. We prohibit wildlife observation, scouting, and loitering at the access point.

2. Hunting Hours: We will close the Waterfowl Hunting Area to waterfowl hunting on Mondays and Thursdays. We open the hunting area, defined by the refuge boundary fence, 2 hours before and require departure 2 hours after legal waterfowl hunting hours, as defined by the State.

\* \* \* \* \*

16. Hunting Blind #8 has a minimum requirement of six decoys.

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

4. Tree Stands and Blinds: We allow each hunter the use of a maximum of two portable tree stands or blinds. Hunters must register each stand/blind with the refuge headquarters. We prohibit hunters leaving each stand/blind unattended for more than 72 hours.

\* \* \* \* \*

#### Northeast Montana Wetland Management District

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following conditions:

1. We prohibit the use of motorboats.

2. You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction at the end of each day (see §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following conditions:

1. Hunters may possess only approved nontoxic shot (see § 32.2(k)).

2. We prohibit the use of horses for any purpose.

*C. Big Game Hunting.* We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following conditions:

1. We allow hunters to leave portable tree stands and freestanding elevated platforms on Waterfowl Production Areas from August 25 through February 15.

2. You must label portable tree stands and freestanding elevated platforms with your name and address such that it is legible from the ground.

3. Condition B2 applies.

4. You must remove portable ground blinds and any other personal property

at the end of each day (see §§ 27.93 and 27.94 of this chapter).

*D. Sport Fishing.* [Reserved]

#### Northwest Montana Wetland Management District

*A. Migratory Game Bird Hunting.* We allow migratory game bird hunting on Waterfowl Production Areas (WPAs) throughout the wetland district in accordance with State regulations (Flathead County WPAs) or Joint State/Tribal regulations (Lake County WPAs) subject to the following conditions:

1. We prohibit motorboats except on the Flathead and Smith Lake WPAs in Flathead County.

2. Hunters must operate motorboats at no-wake speeds on Flathead and Smith Lake WPAs in Flathead County.

3. Hunters must remove all boats, decoys, portable blinds, boat blinds and other personal property at the end of each day (see §§ 27.93 and 27.94 of this chapter).

4. Dogs must be on a leash from April 1 to August 31. Dogs must be under the owner's immediate control at all other times. We prohibit free-roaming pets year-round on any portion of the WPAs.

5. We prohibit overnight camping and/or open fires (see § 27.95(a) of this chapter).

6. Hunters must construct blinds, other than portable blinds, of native materials only. Hunters must label all nonportable blinds with their name, address, and phone number. Construction and labeling of these blinds does not constitute exclusive use of the blind. Hunters must remove these blinds within 7 days of the close of the migratory game bird hunting season.

*B. Upland Game Hunting.* We allow upland game hunting on all WPAs throughout the wetland district in accordance with State regulations (Flathead County WPAs) or Joint State/Tribal regulations (Lake County WPAs) subject to the following conditions:

1. Hunters may possess only approved nontoxic shot (see § 32.2(k)).

2. We prohibit the use of horses for any purpose.

*C. Big Game Hunting.* We prohibit big game hunting on Lake County WPA per Joint State/Tribal regulations. We allow big game hunting on Flathead County WPAs in accordance with State regulations subject to the following conditions:

1. We allow portable tree stands and/or portable ground blinds; however, they must be removed daily. We prohibit construction and/or use of tree stands or portable ground blinds from dimensional lumber.

2. Conditions A5 and B2 apply.

3. We prohibit ATV and/or snowmobile use.

D. *Sport Fishing*. We allow sport fishing on all WPAs throughout the wetland district in accordance with State regulations (Flathead County WPAs) or Joint State/Tribal regulations (Lake County WPAs) subject to the following conditions:

1. Anglers must remove all motorboats, boat trailers, vehicles, fishing equipment, and other personal property from the WPAs at the end of each day (see §§ 27.93 and 27.94 of this chapter).

2. We prohibit the use of motorboats except on Flathead and Smith Lake WPAs in Flathead County.

3. Anglers must operate motorboats at no-wake speeds on Flathead and Smith Lake WPAs in Flathead County.

4. We strictly prohibit harassing or hazing of migratory game birds with a motorboat.

\* \* \* \* \*

#### ■ 19. Amend § 32.48 New Hampshire by:

■ a. Revising the introductory text of paragraph A., revising paragraphs A.2., A.3., revising the introductory text of paragraph B., revising paragraphs B.2., B.3., B.5., B.6., revising the introductory text of paragraph C., revising paragraphs C.1., C.2., and adding paragraph C.6. of Lake Umbagog National Wildlife Refuge; and

■ b. Revising paragraphs A.2. and C.5. of Silvio O. Conte National Wildlife Refuge to read as follows:

#### § 32.48 New Hampshire.

\* \* \* \* \*

#### Lake Umbagog National Wildlife Refuge

A. *Migratory Game Bird Hunting*. We allow hunting of duck, goose, merganser, coot, snipe, and woodcock in accordance with State regulations, seasons, and bag limits subject to the following conditions:

\* \* \* \* \*

2. At various locations on the refuge, we will provide permanent refuge blinds, which are available for public use by reservation. Hunters may make reservations for particular blinds up to 1 year in advance, for a maximum of 7 days, running Monday through Sunday during the hunting season. Hunters may make reservations for additional weeks up to 7 days in advance, on a space-available basis. We allow no other permanent blinds. Hunters must remove temporary blinds, boats, and decoys from the refuge following each day's hunt (see §§ 27.93 and 27.94 of this chapter).

3. You may use trained dogs to assist in hunting and retrieval of harvested birds. Hunting with locating, pointing,

and retrieving dogs on the refuge will be subject to the following regulations:

- i. We prohibit dog training.
- ii. We allow a maximum of two dogs per hunter.
- iii. You must pick up all dogs the same day you release them (see § 26.21(b) of this chapter).

\* \* \* \* \*

B. *Upland Game Hunting*. We allow hunting of coyote (see C. Big Game Hunting), fox, raccoon, woodchuck, squirrel, porcupine, skunk, snowshoe hare, ring-necked pheasant, and ruffed grouse in accordance with State regulations, seasons, and bag limits subject to the following conditions:

\* \* \* \* \*

2. You may possess only approved nontoxic shot when hunting with a shotgun (see § 32.2(k)).

3. We open the refuge to hunting during the hours stipulated under each State's hunting regulations, but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset. We close the refuge to night hunting. Hunters must unload all firearms, and nock no arrows outside of legal hunting hours.

\* \* \* \* \*

5. Hunters must wear two articles of hunter-orange clothing or material. One article must be a solid-colored, hunter-orange hat; the other must cover a major portion of the torso, such as a jacket, vest, coat, or poncho, and must be a minimum of 50 percent hunter orange in color (e.g., orange camouflage).

6. We allow hunting of showshoe hare, ring-necked pheasant, and ruffed grouse with trained dogs during State hunting seasons. Hunting with locating, pointing, and retrieving dogs on the refuge will be subject to the following regulations:

- i. We prohibit dog training.
- ii. We allow a maximum of two dogs per hunter.
- iii. You must pick up all dogs the same day you release them (see § 26.21(b) of this chapter).

C. *Big Game Hunting*. We allow hunting of bear, coyote, white-tailed deer, and moose in accordance with State regulations, seasons, and bag limits subject to the following conditions:

1. We open the refuge to hunting during the hours stipulated under each State's hunting regulations but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset. We prohibit night hunting. Hunters must unload all firearms and nock no arrows outside of legal hunting hours.

2. We allow bear and coyote hunting with dogs during State hunting seasons.

Hunting with trailing dogs on the refuge will be subject to the following conditions:

i. Hunters must equip all dogs used to hunt bear and coyote with working radio-telemetry collars and hunters must be in possession of a working radio-telemetry receiver that can detect and track the frequencies of all collars used.

ii. We prohibit dog training.

iii. We allow a maximum of four dogs per hunter.

iv. You must pick up all dogs the same day you release them (see § 26.21(b) of this chapter).

\* \* \* \* \*

6. We prohibit the use of all-terrain vehicles (ATVs or OHVs) on refuge land.

\* \* \* \* \*

#### Silvio O. Conte National Wildlife Refuge

A. *Migratory Game Bird Hunting*.

\* \* \*

\* \* \* \* \*

2. You must wear in a conspicuous manner on the outermost layer of the head, chest, and back a minimum of 400 square inches (2,600 cm<sup>2</sup>) of hunter-orange clothing or material, except when hunting waterfowl from a blind or boat or over waterfowl decoys.

\* \* \* \* \*

C. *Big Game Hunting*. \* \* \*

\* \* \* \* \*

5. Conditions A4 and A5 apply.

\* \* \* \* \*

■ 20. Amend § 32.49 New Jersey by revising paragraph D. of Cape May National Wildlife Refuge to read as follows:

#### § 32.49 New Jersey.

\* \* \* \* \*

#### Cape May National Wildlife Refuge

\* \* \* \* \*

D. *Sport Fishing*. We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing from 1 hour before legal sunrise to 1 hour after legal sunset.

2. We allow fishing only along beach areas of the Two Mile Beach Unit.

3. The Atlantic Ocean beach is closed annually to all access, including fishing, between April 1 and September 30.

4. We prohibit commercial fishing, crabbing, and clamming on refuge lands.

5. We prohibit fishing or possession of conchs or shellfish on refuge lands.

6. We prohibit dogs on the Two Mile Beach Unit.

7. We prohibit unauthorized vehicles, including all-terrain vehicles (ATVs), on any portion of the Two Mile Beach Unit.

8. We prohibit sunbathing on refuge lands.

9. We prohibit access to swimming or surfing in the Atlantic Ocean.

\* \* \* \* \*

■ 21. Amend § 32.50 New Mexico by:

■ a. Revising paragraphs A.1., A.2., A.3., B.2., B.3., C.2., C.3., and D.6. of Bosque del Apache National Wildlife Refuge;

■ b. Revising the introductory text of paragraph A., revising paragraphs A.5., A.6., A.7., and A.8. of Las Vegas National Wildlife Refuge; and

■ c. Adding paragraph A.3. of Sevilleta National Wildlife Refuge to read as follows:

**§ 32.50 New Mexico.**

\* \* \* \* \*

**Bosque del Apache National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

1. You must possess and carry a refuge permit for hunting of light goose. The permit is available through a lottery drawing. Applications must be postmarked by November 15 of each year. A \$6.00 nonrefundable application fee must accompany each application.

2. We allow hunting of light goose on dates to be determined by refuge staff. We will announce hunt dates by September 1 of each year. Hunters must report to the refuge headquarters by 4:45 a.m. each hunt day. Legal hunting hours will run from ½ hour before legal sunrise and will not extend past 11:00 a.m. local time.

3. We allow the use of hunting dogs for animal retrieval. You must keep dogs on a leash when not hunting (see § 26.21(b) of this chapter).

\* \* \* \* \*

*B. Upland Game Hunting.*

\* \* \* \* \*

2. Conditions A3 through A8 apply.

3. We allow cottontail rabbit hunting between December 1 and the last day of February. We prohibit the use of hounds for cottontail rabbit hunting.

*C. Big Game Hunting.*

\* \* \* \* \*

2. Hunting on the east side of the Rio Grande is by foot, horseback, or bicycle only. Bicycles must stay on designated roads.

3. We allow oryx hunting from the east bank of the Rio Grande and to the east boundary of the refuge. We will allow hunters possessing a valid State special off-range permit to hunt oryx on the refuge during the concurrent State deer season. We also may establish

special hunt dates each year for oryx. Contact the refuge manager for special dates and conditions.

\* \* \* \* \*

*D. Sport Fishing.*

\* \* \* \* \*

6. We allow frogging for bullfrog on the refuge in areas that are open to fishing.

\* \* \* \* \*

**Las Vegas National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of mourning dove and goose on designated areas of the refuge in accordance with State regulations subject to the following conditions:

\* \* \* \* \*

5. We allow goose hunting on designated day(s) of the week as identified on the permit.

6. Shooting hours for geese are from ½ hour before legal sunrise to 1:00 p.m. local time.

7. We assign a bag limit for both light goose and Canada goose to two geese each.

8. For goose hunting you may possess only approved nontoxic shells (see § 32.2(k)) while in the field in quantities of six or less.

\* \* \* \* \*

**Sevilleta National Wildlife Refuge**

\* \* \* \* \*

*A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

3. The refuge may designate special youth and/or persons with disabilities hunting days during the regular game bird season. This will apply to areas, species, days, and times that are currently part of the refuge's hunting program. For additional information concerning these changes, please contact the refuge staff. We will print specific dates and information regarding these special days in the refuge's 2008–2009 hunt leaflet.

\* \* \* \* \*

■ 22. Amend § 32.51 New York by revising paragraph A.14. of Montezuma National Wildlife Refuge to read as follows:

**§ 32.51 New York.**

\* \* \* \* \*

**Montezuma National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

14. You may possess only 25 or fewer approved nontoxic shells while in the field (see § 32.2(k)).

\* \* \* \* \*

■ 23. Amend § 32.52 North Carolina by:

■ a. Removing paragraph A.3., redesignating paragraphs A.4. through A.7. as paragraphs A.3. through A.6. of Currituck National Wildlife Refuge;

■ b. Revising the heading of MacKay Island National Wildlife Refuge to read Mackay Island National Wildlife Refuge;

■ c. Removing paragraphs A.2., A.5., and A.8., redesignating paragraphs A.3. as A.2., A.4. as A.3., A.6. as A.4., and A.7. as A.5, revising newly redesignated paragraph A.5., revising paragraph B.1., removing paragraphs B.2. and B.3., redesignating paragraph B.4. as B.2., revising paragraphs C.1., C.2., C.3., C.4., and C.10., removing paragraph D.4., and redesignating paragraph D.5. as D.4. of Pee Dee National Wildlife Refuge;

■ d. Revising paragraphs A.1., A.4., A.9., revising the introductory text of paragraph C., and revising paragraphs C.3., C.4., C.7., and C.8. of Pocosin Lakes National Wildlife Refuge to read as follows:

**§ 32.52 North Carolina.**

\* \* \* \* \*

**Pee Dee National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

5. We prohibit hunting on, from, or across any road open to public vehicle traffic. This includes the right-of-way which extends 30 feet (9 m) in either direction from the center of the road and all public parking areas.

\* \* \* \* \*

*B. Upland Game Hunting.*

\* \* \*

1. Conditions A1 through A5 apply.

\* \* \* \* \*

*C. Big Game Hunting.*

\* \* \*

1. Conditions A1 through A5 apply (with the following exception to condition A2: Each adult may supervise no more than one youth hunter).

2. We require each person participating in a quota deer hunt to possess a refuge Quota Deer Hunt Permit. The Quota Deer Hunt Permit is nontransferable.

3. During deer hunts we prohibit hunters from entering the refuge earlier than 4 a.m., and they must leave the refuge no later than 2 hours after legal sunset.

4. Youth hunts are for hunters under age 16. We prohibit adults from possessing or discharging a firearm during the youth deer hunts.

\* \* \* \* \*

10. You must check all deer taken on the refuge at the refuge check station on the date of take prior to removing the animal from the refuge. If we do not have the check station staffed by refuge

personnel, you must use the self-check-in procedures.

\* \* \* \* \*

#### **Pocosin Lakes National Wildlife Refuge**

##### *A. Migratory Game Bird Hunting.*

\* \* \*

1. We prohibit hunting on the Davenport and Deaver tracts (which include the area surrounding the Headquarters/Visitor Center and the Scuppernong River Interpretive Boardwalk), the Pungo Shop area, New Lake, refuge lands between Lake Phelps and Shore Drive, that portion of the Pinner Tract east of SR 1105, the portion of Allen Road between Shore Drive and the gate on the north end of Allen Road (including the area on both sides of this section of Allen Road for a distance of 100 yards (90 m)), the portion of Western Road between the intersection with Seagoing Road and the gate to the south, and the unnamed road at the southern boundary of the refuge land located west of Pettigrew State Park's Cypress Point Access Area. During November, December, January, and February, we prohibit all public entry on Pungo and New Lakes, Duck Pen Road, and the Pungo Lake, Riders Creek, and Dunbar Road banding sites.

\* \* \* \* \*

4. We open the refuge for daylight use only, except that we allow hunters to enter and remain in open hunting areas from 1½ hours before legal shooting time until 1½ hours after legal shooting time.

\* \* \* \* \*

9. You may possess only approved nontoxic shot (see § 32.2(k)) while migratory game bird hunting on and west of Evans Road.

\* \* \* \* \*

*C. Big Game Hunting.* We allow hunting of deer, turkey, and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

\* \* \* \* \*

3. We allow the use of only shotguns, muzzleloaders, and bow and arrow for deer and feral hog hunting. We allow disabled hunters to use crossbows but only while possessing the required State permit. We allow feral hogs to be taken in any area, except the Pungo Unit, when the area is open to hunting deer. We allow feral hogs to be taken using bow and arrow (during the State bow and arrow and gun deer seasons), muzzleloaders (during the State muzzleloader and gun deer seasons), and firearms (during the State gun deer season). In addition, feral hogs may be taken on the Frying Pan Unit during all open firearm seasons.

4. You may possess only approved nontoxic shot (see § 32.2(k)) while hunting turkeys on the Pungo Unit.

\* \* \* \* \*

7. Prior to December 1, we allow deer hunting with bow and arrow on the Pungo Unit during all State deer seasons, except the muzzleloading season; however, we prohibit hunting on the Pungo Unit on the designated Pungo Deer Gun-Hunts referred to above without a valid Pungo Deer Gun-Hunt Permit.

8. You must wear 500 square inches (3,250 cm<sup>2</sup>) of fluorescent-orange material above the waist that is visible from all sides while hunting deer and feral hogs in any area open to hunting these species with firearms.

\* \* \* \* \*

#### ■ 24. Amend § 32.53 North Dakota by:

- a. Revising paragraphs B.1. through B.3., revising paragraphs C.1. through C.4., and revising paragraph D. of Audubon National Wildlife Refuge;
- b. Revising paragraph A.2. of Lake Alice National Wildlife Refuge; and
- c. Revising paragraphs A., B., and C. of Lostwood National Wildlife Refuge to read as follows:

#### **§ 32.53 North Dakota.**

\* \* \* \* \*

#### **Audubon National Wildlife Refuge**

\* \* \* \* \*

##### *B. Upland Game Hunting.* \* \* \*

1. We open to upland game hunting annually on the day following the close of the regular deer gun season, and we close per the State season.

2. We prohibit hunting on or from refuge roads while operating a vehicle. Hunters must park in designated parking areas or at the refuge boundary and walk in.

3. We allow game retrieval without a firearm up to 100 yards (90 m) inside the refuge boundary fence and closed areas of the refuge. Retrieval time may not exceed 10 minutes. You may use dogs to assist in retrieval.

\* \* \* \* \*

##### *C. Big Game Hunting.* \* \* \*

1. The refuge gun, muzzleloader, and bow deer hunting seasons open and close according to State regulations.

2. We close the refuge to the State special youth deer hunting season.

3. We prohibit hunting on or from refuge roads while operating a vehicle. Hunters must park in designated parking areas or at the refuge boundary and walk in. Hunters may use designated refuge roads to retrieve downed deer.

4. We allow only portable tree stands. You must remove all tree stands at the

end of each day (see § 27.93 and 27.94 of this chapter).

\* \* \* \* \*

*D. Sport Fishing.* We allow ice fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We restrict vehicle use to designated ice access points and refuge roads (see § 27.31 of this chapter).

2. We allow vehicles and fish houses on the ice as conditions allow. We require anglers to remove fish houses, or parts thereof, from the refuge ice, water, and land by no later than March 15 of each year. We allow anglers to use portable houses after March 15, but anglers must remove them from the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

3. We prohibit leaving fish houses unattended on refuge uplands or in refuge parking areas.

4. We prohibit all shore and boat fishing on the refuge.

\* \* \* \* \*

#### **Lake Alice National Wildlife Refuge**

##### *A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

2. We allow motorized boats only during the migratory game bird hunting season; however, motors must not exceed 10 hp.

\* \* \* \* \*

#### **Lostwood National Wildlife Refuge**

##### *A. Migratory Game Bird Hunting.*

[Reserved]

*B. Upland Game Hunting.* We allow hunting of ring-necked pheasant, sharp-tailed grouse, and gray partridge on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit hunting on the portion of the refuge south of Highway 50 during the State deer gun season.

2. We allow hunting only on the portion of the refuge north of Highway 50 beginning the day following the close of the State deer gun season through the end of the State season.

3. We allow falconry on the refuge only during the State upland game season subject to conditions B1 and B2.

4. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

5. We prohibit the use of horses during all hunting seasons.

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The refuge gun, muzzleloader, and bow deer hunting seasons open and close according to State regulations.

2. We prohibit entry to the refuge before 12 p.m. (noon) on the first day of the archery, gun, or muzzleloader deer hunting season.

3. We will allow only preseason scouting in public use areas and hiking trails.

4. We allow only portable tree stands. You must remove all tree stands at the end of each day (see §§ 27.93 and 27.94 of this chapter).

5. Condition B5 applies.

\* \* \* \* \*

■ 25. Amend § 32.55 Oklahoma by:

■ a. Revising paragraphs B.1., B.2., B.6., and C.6. of Deep Fork National Wildlife Refuge;

■ b. Revising paragraph D.1. and removing paragraph D.2. of Little River National Wildlife Refuge;

■ c. Revising paragraph D.6. of Salt Plains National Wildlife Refuge;

■ d. Revising paragraphs A.1., A.2., A.6., A.9., removing paragraph A.10., revising paragraph B.1., and removing paragraph C.4. of Sequoyah National Wildlife Refuge;

■ e. Redesignating paragraphs D.3. through D.12. as paragraphs D.4. through D.13. and adding a new paragraph D.3. of Tishomingo National Wildlife Refuge; and

■ f. Revising the introductory text of paragraph D. and adding paragraph D.6. of Wichita Mountains National Wildlife Refuge to read as follows:

#### § 32.55 Oklahoma.

\* \* \* \* \*

#### Deep Fork National Wildlife Refuge

\* \* \* \* \*

##### *B. Upland Game Hunting.* \* \* \*

1. You must possess and carry a signed refuge permit for squirrel, rabbit, and raccoon. We require no fee.

2. We allow only shotguns, .22 caliber rimfire rifles, and .17 caliber rimfire rifles for rabbit and squirrel. We allow only special archery hunts by refuge Special Use Permit.

\* \* \* \* \*

6. We offer refuge-controlled turkey hunts. We require hunters to possess a permit and pay a fee for these hunts. You may call the refuge office or the State for information concerning these hunts.

\* \* \* \* \*

##### *C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

6. We offer refuge-controlled deer hunts (archery, primitive weapon, youth primitive). We require hunters to possess a permit and pay a fee for these

hunts. For information concerning the hunts, contact the refuge office or the State.

\* \* \* \* \*

#### Little River National Wildlife Refuge

\* \* \* \* \*

##### *D. Sport Fishing.* \* \* \*

1. Condition A1 applies.

\* \* \* \* \*

#### Salt Plains National Wildlife Refuge

\* \* \* \* \*

##### *D. Sport Fishing.* \* \* \*

\* \* \* \* \*

6. We only allow fishing on Bonham Pond:

- i. By youths age 14 and under;
- ii. By any person with a disability;
- iii. Only from legal sunrise to legal sunset;
- iv. With a limit of one pole per person; and
- v. Catch and release only.

#### Sequoyah National Wildlife Refuge

##### *A. Migratory Game Bird Hunting.*

\* \* \*

1. We require an annual refuge permit for all hunting. The hunter must possess and carry the signed permit while hunting.

2. We open the refuge to hunting only on Saturdays, Sundays, Mondays, and Tuesdays. We prohibit hunters from entering the land portion of the Sandtown Bottom Unit or any portion of Sally Jones Lake before 5:00 a.m.

Hunters must leave the area by 1 hour after legal sunset. We prohibit hunting or shooting within 50 feet (15 m) of designated roads or parking areas. All hunters must park in designated parking areas.

\* \* \* \* \*

6. We allow boats. You must operate them under applicable State laws and comply with all licensing, marking, and safety regulations from the State of origin.

\* \* \* \* \*

9. We restrict the use of airboats within the refuge boundary to the Arkansas River navigation channel and to designated hunting areas from September 1 to March 1.

##### *B. Upland Game Hunting.* \* \* \*

1. Conditions A1, A2, and A7 through A9 apply.

\* \* \* \* \*

#### Tishomingo National Wildlife Refuge

\* \* \* \* \*

##### *D. Sport Fishing.* \* \* \*

\* \* \* \* \*

3. We prohibit airboats, hovercraft, and personal watercraft on all refuge

waters and waters of the Wildlife Management Unit.

\* \* \* \* \*

#### Wichita Mountains National Wildlife Refuge

\* \* \* \* \*

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

\* \* \* \* \*

6. Anglers may use motorized boats on Elmer Thomas Lake; however, we enforce a no-wake rule on the lake.

■ 26. Amend § 32.56 Oregon by:

■ a. Removing paragraph A.3. and redesignating paragraphs A.4. through A.9. as paragraphs A.3. through A.8; removing paragraphs B.2. and B.4. and redesignating paragraphs B.3., B.5., and B.6., as paragraphs B.2., B.3., and B.4. respectively; removing paragraphs D.2. and D.4., and redesignating paragraphs D.3., D.5., and D.6., as paragraphs D.2., D.3., and D.4., respectively, of Cold Springs National Wildlife Refuge;

■ b. Removing paragraphs A.1., and A.3. and redesignating paragraphs A.2., A.4., A.5., A.6., A.7., and A.8. as paragraphs A.1. through A.6., respectively, and revising paragraph B.1. of McKay Creek National Wildlife Refuge; and

■ c. Revising paragraph A.2. of Umatilla National Wildlife Refuge to read as follows:

#### § 32.56 Oregon.

\* \* \* \* \*

#### McKay Creek National Wildlife Refuge

\* \* \* \* \*

##### *B. Upland Game Hunting.* \* \* \*

1. Condition A1 applies.

\* \* \* \* \*

#### Umatilla National Wildlife Refuge

##### *A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

2. On the McCormack Unit, you may possess only approved nontoxic shotshells (see § 32.2(k)) in quantities of 25 or fewer per day.

■ 27. Amend § 32.57 Pennsylvania by revising paragraphs A.2. through A.5. and adding paragraphs A.6. and A.7., revising paragraphs B.2., C., and D.4. through D.7., and removing paragraphs D.8. and D.9. of Erie National Wildlife Refuge to read as follows:

#### § 32.57 Pennsylvania.

\* \* \* \* \*

#### Erie National Wildlife Refuge

##### *A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*



2. We require all persons to possess and carry a refuge hunt permit.

3. We require that hunters display in plain view a refuge hunt permit in the windshield area of their vehicle while parked on the refuge.

4. We only allow nonmotorized boats for waterfowl hunting.

5. We require that hunters remove all boats, blinds, and decoys from the refuge within 1 hour after legal sunset (see §§ 27.93 and 27.94 of this chapter).

6. We allow dogs for hunting; however, they must be under the immediate control of the hunter at all times (see § 26.21(b) of this chapter).

7. We prohibit field possession of migratory game birds in areas of the refuge closed to migratory game bird hunting.

*B. Upland Game Hunting.* \* \* \*

\* \* \*

2. Condition A3 applies.

\* \* \*

*C. Big Game Hunting.* We allow hunting of deer, bear, and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting on the refuge from September 1 through the end of February. We also allow spring turkey hunting in accordance with State regulations.

2. We require all persons to possess and carry a refuge hunt permit.

3. Conditions A3 and A5 apply.

4. We prohibit organized deer drives in hunt area B of the Sugar Lake Division. We define a "drive" as three or more persons involved in the act of chasing, pursuing, disturbing, or otherwise directing deer so as to make the animal more susceptible to harvest.

5. We prohibit the use of watercraft for big game hunting.

*D. Sport Fishing.* \* \* \*

\* \* \*

4. We allow ice fishing in Areas 5 and 7 only.

5. We prohibit the taking of minnow, turtle, or frog.

6. We prohibit the possession of live baitfish on the Seneca Unit.

7. We prohibit the taking or possession of shellfish on the refuge.

\* \* \*

■ 28. Amend § 32.60 South Carolina by:  
■ a. Revising the listing of ACE Basin National Wildlife Refuge to read Ernest F. Hollings ACE Basin National Wildlife Refuge, placing the listing in the correct alphabetical order, and revising paragraphs C.3., C.9. and C.10. of Ernest F. Hollings ACE Basin National Wildlife Refuge;

■ b. Revising paragraph D. of Cape Romain National Wildlife Refuge;

■ c. Adding paragraphs A.9. and B.5., and revising paragraph C. of Carolina Sandhills National Wildlife Refuge;

■ d. Revising paragraph C.6. of Pinckney Island National Wildlife Refuge; and

■ e. Revising paragraphs A.6. and B.4. of Waccamaw National Wildlife Refuge to read as follows:

**§ 32.60 South Carolina.**

\* \* \*

**Cape Romain National Wildlife Refuge**

\* \* \*

*D. Sport Fishing.* We allow fishing, crabbing, shell fishing, shrimping, and the harvest of other marine species on designated areas of the refuge subject to State regulations and the following condition: Marsh Island, White Banks, and Bird Island are open from September 15 through February 15. We close them the rest of the year to protect nesting birds.

**Carolina Sandhills National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \*

9. We prohibit the possession or use of more than 50 shotgun shells.

*B. Upland Game Hunting.* \* \* \*

\* \* \*

5. All persons participating in refuge firearms hunts must wear at least 500 square inches (3,250 cm<sup>2</sup>) of unbroken, fluorescent-orange material above the waist as an outer garment that is visible from all sides while hunting and while en route to and from hunting areas. This does not apply to raccoon hunters.

*C. Big Game Hunting.* We allow hunting of white-tailed deer, turkey, and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A3 through A5, and A8 apply (with the following exception for condition A4: Each adult may supervise no more than one youth hunter).

2. All deer, feral hog, and turkey taken on the refuge must be checked in on the date of take prior to removing the animal from the refuge.

3. During deer and turkey hunts, we prohibit hunters from entering the refuge earlier than 4 a.m. Deer hunters must leave the refuge no later than 2 hours after legal sunset. Turkey hunts will end each day at 1 p.m. Hunters must unload and encase or dismantle all firearms after 1 p.m.

4. All persons participating in refuge firearms deer hunts must wear at least

500 square inches (3,250 cm<sup>2</sup>) of unbroken, fluorescent-orange material above the waist as an outer garment that is visible from all sides while hunting and while en route to and from hunting areas.

5. During the primitive weapons hunt, you may use bow and arrow, muzzleloading shotguns (20 gauge or larger), or muzzleloading rifles (.40 caliber or larger). We prohibit revolving rifles and black-powder handguns.

6. During modern gun hunts, you may use shotguns, rifles (centerfire and larger than .22 caliber), handguns (.357 caliber or larger and barrel length no less than 6 inches [15 cm]), or any weapon allowed during the primitive weapons hunt. We prohibit military, hard-jacketed bullets, and .22 caliber rimfire rifles during the modern gun hunts.

7. We prohibit man driving for deer. We define a "man drive" as an organized hunting technique involving two or more individuals where hunters attempt to drive game animals from cover or habitat for the purpose of shooting or killing the animals or moving them toward other hunters.

8. We prohibit the use of dogs for any big game hunting.

9. We prohibit the use of plastic flagging.

10. Youth hunts are for hunters under age 16. We prohibit adults from possessing or discharging firearms during youth deer or turkey hunts.

11. We prohibit the use of ATVs, except by mobility-impaired hunters with a Special Use Permit during big game hunts. Mobility-impaired hunters must have a State Disabled Hunting license, be wheelchair dependent, need mechanical aids to walk, or have complete single- or double-leg amputations.

12. We prohibit turkey hunters from calling a turkey for another hunter unless both hunters have Refuge Quota Turkey Hunt Permits.

13. We prohibit turkey hunting in the area defined as east of Hwy. 145, south of Rt. 9, and north of Hwy. 1.

14. We prohibit discharge of weapons (see § 27.42(a) of this chapter) for any purpose other than to take or attempt to take legal game animals during established hunting seasons.

\* \* \*

**Ernest F. Hollings ACE Basin National Wildlife Refuge**

\* \* \*

*C. Big Game Hunting.* \* \* \*

\* \* \*

3. Except for the special quota permit hunts, we allow only archery or

muzzleloader hunting, and there is no quota on the number of hunters allowed to participate. During special quota permit hunts, we allow use of centerfire rifles or shotguns.

\* \* \* \* \*

9. You may take feral hogs during refuge deer hunts. There is no size or bag limit on hogs. We may offer special hog hunts during and after deer season to further control this invasive species. You must dispatch all feral hogs before removing them from the refuge.

10. You must hunt deer and feral hogs from an elevated deer stand. We prohibit shooting big game from a boat.

\* \* \* \* \*

#### Pinckney Island National Wildlife Refuge

\* \* \* \* \*

##### *C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

6. Each hunter may place one stand on the refuge during the week preceding the hunt. You must remove your stand at the end of the hunt (see §§ 27.93 and 27.94 of this chapter).

\* \* \* \* \*

#### Waccamaw National Wildlife Refuge

##### *A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

6. We prohibit permanent blinds. You must remove portable blinds and decoys at the end of each day (see §§ 27.93 and 27.94 of this chapter).

\* \* \* \* \*

##### *B. Upland Game Hunting.* \* \* \*

\* \* \* \* \*

4. We prohibit squirrel and/or raccoon hunting from a boat or other water conveyance on the refuge.

\* \* \* \* \*

■ 29. Amend § 32.61 South Dakota by:

■ a. Revising paragraph C. of Lake Andes Wetland Management District; and

■ b. Adding paragraph C.7. of Waubay National Wildlife Refuge to read as follows:

#### § 32.61 South Dakota.

\* \* \* \* \*

#### Lake Andes Wetland Management District

\* \* \* \* \*

*C. Big Game Hunting.* We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following conditions:

1. We allow the use of archery equipment only for big game hunting on Atkins Waterfowl Production Area in Lincoln County.

2. We allow portable tree stands and freestanding elevated platforms to be left on Waterfowl Production Areas from the first Saturday after August 25 through February 15.

3. You must label portable tree stands and freestanding elevated platforms with your name and address or current hunting license number so it is legible from the ground.

4. You must remove portable ground blinds and other personal property at the end of each day (see §§ 27.93 and 27.94 of this chapter).

5. We prohibit the use of horses for any purpose.

\* \* \* \* \*

#### Waubay National Wildlife Refuge

\* \* \* \* \*

##### *C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

7. You must label portable tree stands and freestanding elevated platforms with your name and address or current hunting license number so it is legible from the ground.

\* \* \* \* \*

■ 30. Amend § 32.62 Tennessee by:

■ a. Revising paragraphs A.2., A.3., B.2., C.2., and adding paragraph D.5. of Cross Creeks National Wildlife Refuge;

■ b. Revising paragraphs A.5., B.3., C.5., D.7., removing paragraphs D.8. and D.10., and redesignating paragraph D.9. as D.8. of Hatchie National Wildlife Refuge; and

■ c. Adding paragraph A.11. and revising paragraph B.5. of Tennessee National Wildlife Refuge to read as follows:

#### § 32.62 Tennessee.

\* \* \* \* \*

#### Cross Creeks National Wildlife Refuge

##### *A. Migratory Game Bird Hunting.*

\* \* \* \* \*

\* \* \* \* \*

2. We require a refuge hunt permit for all hunters age 16 and older. We charge a fee for all hunt permits. You must possess and carry a valid refuge permit while hunting on the refuge.

3. We set and publish season dates and bag limits annually in the refuge hunting regulations available at the refuge office.

\* \* \* \* \*

##### *B. Upland Game Hunting.* \* \* \*

\* \* \* \* \*

2. Condition A2 applies.

\* \* \* \* \*

##### *C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

2. You may only participate in the refuge quota deer hunts with a special

quota permit issued through random drawing. Information for permit applications is available at the refuge headquarters.

##### *D. Sport Fishing.* \* \* \*

\* \* \* \* \*

5. We limit boats to no-wake speed on all refuge impoundments and reservoirs.

#### Hatchie National Wildlife Refuge

##### *A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

5. Mourning dove, woodcock, and snipe seasons close during all deer archery and quota gun hunts.

\* \* \* \* \*

##### *B. Upland Game Hunting.* \* \* \*

\* \* \* \* \*

3. We close all small game hunts during the refuge deer archery and quota gun hunts.

\* \* \* \* \*

##### *C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

5. We allow archery-only hunting on designated areas of the refuge (refer to the refuge brochure).

\* \* \* \* \*

##### *D. Sport Fishing.* \* \* \*

\* \* \* \* \*

7. We open Oneal Lake for bank fishing during a restricted season and for authorized special events. Information on events and season dates is available at the refuge headquarters.

\* \* \* \* \*

#### Tennessee National Wildlife Refuge

##### *A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

11. We prohibit hunters cutting vegetation and bringing exotic/invasive vegetation to the refuge.

##### *B. Upland Game Hunting.* \* \* \*

\* \* \* \* \*

5. We allow hunters access to the refuge from 1½ hours before legal sunrise to 1½ hours after legal sunset, with the exception of raccoon hunting.

\* \* \* \* \*

■ 31. Amend § 32.63 Texas by:

■ a. Revising paragraphs A.2., A.4., A.10., A.16., and D. of Anahuac National Wildlife Refuge;

■ b. Revising paragraphs C.6. and C.11. and removing paragraph C.17. of Laguna Atascosa National Wildlife Refuge;

■ c. Revising paragraph A.2., redesignating paragraphs A.7. through A.16. as paragraphs A.8. through A.17. and adding a new paragraph A.7., and revising newly designated paragraphs A.10, A.11., and A.14., and revising paragraph D. of McFaddin National Wildlife Refuge;

- d. Revising paragraphs A.2., A.8., A.11., and D. of Texas Point National Wildlife Refuge;
- e. Revising paragraphs B.1., B.2., B.6., adding paragraph B.8, and revising paragraph C. of Trinity River National Wildlife Refuge to read as follows:

**§ 32.63 Texas.**

\* \* \* \* \*

**Anahuac National Wildlife Refuge***A. Migratory Game Bird Hunting.*

\* \* \* \* \*

- 2. You must possess and carry a current signed refuge hunting permit while hunting on all hunt units of the refuge.

\* \* \* \* \*

4. We allow hunting in portions of the East Unit on Saturdays, Sundays, and Tuesdays during the regular waterfowl season. We require payment of a \$10 daily or \$40 annual fee to hunt on the East Unit. All hunters must check in and out through the check station when accessing the East Unit by vehicle. We will allow a limited number of parties to access the East Unit by vehicle. All hunters entering the East Unit through the check station will designate a hunt area on a first-come-first-served basis (special duck hunt areas will be assigned through a random drawing). We will require hunters to remain in an assigned area for that day's hunt. We allow hunters to access designated areas of the East Unit by boat from Jackson Ditch, East Bay Bayou, or Onion Bayou. We require hunters accessing the East Unit by boat from Jackson Ditch, East Bay Bayou, or Onion Bayou to pay the \$40 annual fee. We prohibit access to the East Unit Reservoirs from Onion Bayou via boat. We prohibit the use of motorized boats on the East Unit, except on ponds accessed from Jackson Ditch via Onion Bayou. We prohibit motorized boats launching from the East Unit.

\* \* \* \* \*

- 10. Hunters age 17 and under must be under the direct supervision of an adult age 18 or older.

\* \* \* \* \*

16. We prohibit pits and permanent blinds. We allow portable blinds or temporary natural vegetation blinds. You must remove all blinds from the refuge daily (see §§ 27.93 and 27.94 of this chapter).

\* \* \* \* \*

*D. Sport Fishing.* We allow fishing and crabbing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing and crabbing on shoreline areas on East Galveston Bay, along East Bay Bayou on the East Bay Bayou Tract, along West Line Road to the southern end of Shoveler Pond, along the canal from the Oyster Bayou Boat Ramp to the southwest corner of Shoveler Pond, and along the banks of Shoveler Pond.

2. We allow fishing and crabbing only with pole and line, rod and reel, or handheld line. We prohibit the use any method not expressly allowed, including trotlines, setlines, jug lines, limb lines, bows and arrows, gigs, spears, or crab traps.

3. We allow cast netting for bait for personal use along waterways in areas open to the public and along public roads.

4. We prohibit boats and other floatation devices on inland waters. You may launch motorized boats in East Bay at the East Bay Boat Ramp on Westline Road and at the Oyster Bayou Boat Ramp (boat canal). We prohibit the launching of airboats or personal watercraft on the refuge. You may launch nonmotorized boats only along East Bay Bayou and along the shoreline of East Galveston Bay.

5. We prohibit fishing from or mooring to water control structures.

\* \* \* \* \*

**Laguna Atascosa National Wildlife Refuge**

\* \* \* \* \*

*C. Big Game Hunting.*

\* \* \* \* \*

6. Each youth hunter, ages 12 through 17, must be accompanied by, and remain within sight and normal voice contact of, an adult age 21 or older. Hunters must be at least age 12.

\* \* \* \* \*

11. We restrict vehicle access to service roads not closed by gates or signs. We prohibit the use of all-terrain vehicles (ATVs) or off-road vehicles (ORVs) (see § 27.31 of this chapter). You may only access hunt units by foot or bicycle.

\* \* \* \* \*

**McFaddin National Wildlife Refuge***A. Migratory Game Bird Hunting.*

\* \* \* \* \*

2. You must possess and carry a current signed refuge hunting permit while hunting on all units of the refuge.

\* \* \* \* \*

7. We allow hunting in the Star Lake/Clam Lake Hunt Unit daily during the special teal season and on Saturdays, Sundays, and Tuesdays of the regular waterfowl season. During the regular

waterfowl season only, all hunters hunting the Star Lake/Clam Lake Hunt Units must register at the check station, including those accessing the unit from the beach along the Brine Line or Perkins Levee. Hunters will choose a designated hunt area on a first-come-first-served basis and will be required to remain in assigned areas for that day's hunt. All hunters accessing Star Lake and associated waters via boat must access through the refuge's Star Lake boat ramp.

\* \* \* \* \*

10. We allow daily hunting in the Mud Bayou Hunt Unit during the September teal season and on Sundays, Wednesdays, and Fridays of the regular waterfowl season. We allow access by foot from the beach at designated crossings or by boat from the Gulf Intracoastal Waterway via Mud Bayou.

11. Hunters age 17 or under must be under the direct supervision of an adult age 18 or older.

\* \* \* \* \*

14. We prohibit pits and permanent blinds. We allow portable blinds or temporary natural vegetation blinds. You must remove all blinds from the refuge daily (see §§ 27.93 and 27.94 of this chapter).

\* \* \* \* \*

*D. Sport Fishing.* We allow fishing and crabbing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow fishing and crabbing with pole and line, rod and reel, or handheld line. We prohibit the use of any method not expressly allowed in inland waters, including trotlines, set lines, jug lines, limb lines, bows and arrows, gigs, spears, and crab traps.

2. We allow cast netting for bait for personal use along waterways in areas open to the public and along public roads.

3. We allow fishing and crabbing in 10-Mile Cut and Mud Bayou and in the following inland waters: Star Lake, Clam Lake, and Mud Lake. We also allow fishing and crabbing from the shoreline of the Gulf Intracoastal Waterway and along roadside ditches.

4. Conditions A5 and A6 apply.

5. We prohibit fishing from or mooring to water control structures.

\* \* \* \* \*

**Texas Point National Wildlife Refuge***A. Migratory Game Bird Hunting.*

\* \* \* \* \*

\* \* \* \* \*

2. You must possess and carry a current signed refuge hunting permit

while hunting on all hunt units of the refuge.

\* \* \* \* \*

8. Hunters age 17 or under must be under the direct supervision of an adult age 18 or older.

\* \* \* \* \*

11. We prohibit pits and permanent blinds. We allow portable blinds or temporary natural vegetation blinds. You must remove all blinds from the refuge daily (see §§ 27.93 and 27.94 of this chapter).

\* \* \* \* \*

*D. Sport Fishing.* We allow fishing and crabbing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing and crabbing only with pole and line, rod and reel, or handheld line. We prohibit the use of any method not expressly allowed in inland waters, including trotlines, set lines, jug lines, limb lines, bows and arrows, gigs, spears, and crab traps.

2. We allow cast netting for bait only by individuals along waterways in areas open to the public and along public roads.

3. Conditions A6 and A7 apply.

4. We prohibit fishing from or mooring to water control structures.

#### **Trinity River National Wildlife Refuge**

\* \* \* \* \*

##### *B. Upland Game Hunting.* \* \* \*

1. We require each participant to pay an application fee to obtain a permit. We will limit the number of permits issued for the designated hunt season. Consult the refuge brochure or call the refuge for hunt dates.

2. We allow hunting during a designated 23-day season.

\* \* \* \* \*

6. Youth hunters ages 17 and under must be under the direct supervision of an adult age 18 or older. Hunters must be at least age 12.

\* \* \* \* \*

8. Participants must possess and carry current authorized hunting permits at all times. Permits are nontransferable. Hunters may enter the refuge and park in an assigned parking area no earlier than 5 a.m. We allow hunting from ½ hour before legal sunrise to ½ hour after legal sunset. We require hunters to return a data log card.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting during two designated 9-day rifle/shotgun seasons. We require participants to pay an

application fee to enter the hunt permit drawing. We issue a refuge permit to those individuals whose names are drawn.

2. We allow hunting during a designated 23-day archery season. We require participants to pay an application fee to obtain a designated number of permits. We issue a refuge permit to those individuals.

3. We allow muzzleloader hunting during the designated State season.

4. Conditions B4 and B6 through B8 apply.

5. We allow only temporary blinds. We prohibit hunting or blind erection along refuge roads.

6. We restrict the weapon type used depending on the unit hunted. We publish this information on the refuge permit (which you must possess and carry) and in the refuge hunt brochure.

\* \* \* \* \*

■ 32. Amend § 32.64 Utah by revising the introductory text of paragraph A. of Fish Springs National Wildlife Refuge to read as follows:

#### **§ 32.64 Utah.**

\* \* \* \* \*

#### **Fish Springs National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, coot, and goose on designated areas of the refuge in accordance with State regulations subject to the following conditions:

\* \* \* \* \*

■ 33. Amend § 32.66 Virginia by:

■ a. Revising paragraph C. of Eastern Shore of Virginia National Wildlife Refuge;

■ b. Revising paragraphs C.2., C.7., and adding paragraphs C.8. and C.9. of Great Dismal Swamp National Wildlife Refuge; and

■ c. Revising paragraph A. of Plum Tree Island National Wildlife Refuge to read as follows:

#### **§ 32.66 Virginia.**

\* \* \* \* \*

#### **Eastern Shore of Virginia National Wildlife Refuge**

\* \* \* \* \*

*C. Big Game Hunting.* We allow archery and shotgun hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunting brochures containing permit application procedures, fees, seasons, bag limits, methods of hunting, maps depicting areas open to hunting, and the terms and conditions under which we issue hunting permits are

available from the refuge administration office.

2. You must possess and carry a refuge hunt permit while hunting.

3. You must be age 12 or older to hunt on the refuge. Hunters, ages 12 through 17, must be accompanied by and directly supervised (within sight and normal voice contact) by an adult age 18 or older. The supervising adult must also be engaged in hunting and possess and carry a State hunting license and refuge permit.

4. You must sign in before entering the hunt zones and sign out upon leaving the zone.

5. We allow portable tree stands in accordance with §§ 27.93, 27.94, and 32.2(i) of this chapter. You must use safety straps while in tree stands and remove the stand at the end of the day.

6. You must check all harvested animals at the refuge's official check station.

7. We prohibit deer drives. We define a "drive" as three or more persons involved in the act of chasing, pursuing, disturbing, or otherwise directing deer so as to make the animal more susceptible to harvest.

8. We prohibit nocked arrows or loaded firearms outside of the designated hunting areas.

9. We only allow shotguns, 20 gauge or larger, loaded with buckshot during the firearm season.

10. During the firearm hunt, you must wear in a visible manner on the head, chest, and back a minimum of 400 square inches (2,600 cm<sup>2</sup>) of solid-colored-blaze-orange clothing or material.

11. You must make a reasonable effort to recover wounded animals from the field and must notify the check station personnel immediately if you are not able to recover a wounded animal.

\* \* \* \* \*

#### **Great Dismal Swamp National Wildlife Refuge**

\* \* \* \* \*

##### *C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

2. We allow shotguns, 20 gauge or larger, loaded with buckshot or rifled slugs, and bows and arrows. For the bear hunt, we allow only shotguns, 20 gauge or larger, with slugs.

\* \* \* \* \*

7. We require hunters to have their guns, bows and arrows, and crossbows dismantled or cased when in a vehicle.

8. We prohibit hunters to shoot onto or across refuge roads, including roads closed to vehicles.

9. You must check in all harvested bears at the refuge official check station.

\* \* \* \* \*

### Plum Tree Island National Wildlife Refuge

*A. Migratory Game Bird Hunting.* We allow hunting of waterfowl, gallinule, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed Special Use Hunting Permit while hunting migratory game birds on the refuge. We open the Cow Island area of the refuge only to migratory game bird hunting. We close all other areas of the refuge to all public entry. Contact the refuge office for permit information by calling (804) 829-9029 weekdays.

2. We will determine hunting locations, dates, and times by lottery, and we will designate them on hunting permits.

3. We prohibit jump-shooting by foot or boat. All hunting must take place from a blind as determined by hunting permit.

4. Hunters must follow all conditions of their hunt permit.

5. We prohibit any activity that disturbs the bottom, including landing boats, anchoring, driving posts, etc., within the refuge boundary and within the U.S. Army Corps of Engineers designated Danger Zone around Plum Tree Island.

\* \* \* \* \*

■ 34. Amend § 32.67 Washington by:

■ a. Adding paragraph B.3. of Little Pend Oreille National Wildlife Refuge;

■ b. Revising paragraphs B.1. and B.3. and revising paragraph C.1. of McNary National Wildlife Refuge;

■ c. Revising paragraphs A.3. and A.4. of Toppenish National Wildlife Refuge; and

■ d. Removing paragraph A.4. and redesignating paragraphs A.5. through A.9. as paragraphs A.4. through A.8., respectively, of Umatilla National Wildlife Refuge to read as follows:

#### § 32.67 Washington.

\* \* \* \* \*

### Little Pend Oreille National Wildlife Refuge

\* \* \* \* \*

*B. Upland Game Hunting.* \* \* \*

\* \* \* \* \*

3. During the State spring turkey season, we prohibit hunting of all species except turkey.

\* \* \* \* \*

### McNary National Wildlife Refuge

\* \* \* \* \*

*B. Upland Game Hunting.* \* \* \*

1. On the McNary Fee Hunt Unit, we allow hunting of only upland game birds on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Year's Day. We prohibit hunting before 12 p.m. (noon) on each hunt day.

\* \* \* \* \*

3. We allow turkey hunting only on the Wallula unit.

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

1. On the Juniper Canyon and Wallula Units, we allow shotgun and archery hunting only.

\* \* \* \* \*

### Toppenish National Wildlife Refuge

*A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

3. We allow dove hunting only on the Cloe, Webb, Petty, Halvorson, Chambers, and Isiri Units.

4. On the Pumphouse and Robbins Road Units, you may possess only approved nontoxic shotshells (see § 32.2(k)) in quantities of 25 or less per day.

\* \* \* \* \*

■ 35. Amend § 32.69 Wisconsin by:

■ a. Revising the introductory text of paragraphs A., B., and C., and revising paragraphs C.1. and D. of Horicon National Wildlife Refuge; and

■ b. Revising the introductory text of paragraph A. of Whittlesey Creek National Wildlife Refuge to read as follows:

#### § 32.69 Wisconsin.

\* \* \* \* \*

### Horicon National Wildlife Refuge

*A. Migratory Game Bird Hunting.* We allow hunting of duck and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

\* \* \* \* \*

*B. Upland Game Hunting.* We allow hunting of ring-necked pheasant, gray partridge, squirrel, and cottontail rabbit on designated areas of the refuge in accordance with State regulations during the State seasons subject to the following conditions:

\* \* \* \* \*

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting during the State archery, muzzleloader, and State firearms seasons.

\* \* \* \* \*

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following condition: We allow only bank fishing.

\* \* \* \* \*

### Whittlesey Creek National Wildlife Refuge

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds on designated areas of the refuge in accordance with State regulations subject to the following conditions:

\* \* \* \* \*

■ 36. Amend § 32.71 United States Unincorporated Pacific Insular Possessions by revising Midway Atoll National Wildlife Refuge to read as follows:

#### § 32.71 United States Unincorporated Pacific Insular Possessions.

\* \* \* \* \*

### Midway Atoll National Wildlife Refuge

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* [Reserved]

Dated: April 2, 2008.

**David M. Vehrey,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E8-12188 Filed 6-10-08; 8:45 am]

BILLING CODE 4310-55-P



# Federal Register

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**Wednesday,  
June 11, 2008**

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## **Part III**

## **Department of the Interior**

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**Fish and Wildlife Service**

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**50 CFR Part 32**

**2008–2009 Refuge-Specific Hunting and  
Sport Fishing Regulations (Additions);  
Proposed Rule**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 32**

[FWS-R9-WSR-2008-0017; 93270-1265-0000-4A]

RIN 1018-AV20

**2008-2009 Refuge-Specific Hunting and Sport Fishing Regulations (Additions)****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service proposes to add one refuge to the list of areas open for hunting and/or sport fishing programs and increase the activities available at six other refuges for the 2008-2009 season.

**DATES:** Your comments must be postmarked on or before July 11, 2008.

**ADDRESSES:** You may submit comments by one of the following methods:

○ *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

○ *U.S. mail or hand delivery:* Public Comments Processing, Attn: RIN 1018-AV20; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information). For information on specific refuges' public use programs and the conditions that apply to them or for copies of compatibility determinations for any refuge(s), contact individual programs at the addresses/phone numbers given in "Available Information for Specific Refuges" under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:**

Leslie A. Marler, Management Analyst, Division of Conservation Planning and Policy, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 670, Arlington, VA 22203; (703) 358-2397; Fax (703) 358-2248.

**SUPPLEMENTARY INFORMATION:** The National Wildlife Refuge System Administration Act of 1966 closes national wildlife refuges in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or sport fishing, upon a determination that such uses are

compatible with the purposes of the refuge and National Wildlife Refuge System (Refuge System or our/we) mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

We review refuge hunting and sport fishing programs to determine whether to include additional refuges or whether individual refuge regulations governing existing programs need modifications. Changing environmental conditions, State and Federal regulations, and other factors affecting fish and wildlife populations and habitat may warrant modifications to refuge-specific regulations to ensure the continued compatibility of hunting and sport fishing programs and to ensure that these programs will not materially interfere with or detract from the fulfillment of refuge purposes or the Refuge System's mission.

Provisions governing hunting and sport fishing on refuges are in title 50 of the Code of Federal Regulations in part 32 (50 CFR part 32). We regulate hunting and sport fishing on refuges to:

- Ensure compatibility with refuge purpose(s);
- Properly manage the fish and wildlife resource(s);
- Protect other refuge values;
- Ensure refuge visitor safety; and
- Provide opportunities for quality fish and wildlife-dependent recreation.

On many refuges where we decide to allow hunting and sport fishing, our general policy of adopting regulations identical to State hunting and sport fishing regulations is adequate in meeting these objectives. On other refuges, we must supplement State regulations with more-restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined in the "Statutory Authority" section. We issue refuge-specific hunting and sport fishing regulations when we open wildlife refuges to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or fish, along with seasons, bag or creel limits, methods of hunting or sport fishing, descriptions of areas open to hunting or sport fishing, and other

provisions as appropriate. You may find previously issued refuge-specific regulations for hunting and sport fishing in 50 CFR part 32. In this rulemaking, we are also proposing to standardize and clarify the language of existing regulations.

**Plain Language Mandate**

In this proposed rule, we made some of the revisions to the individual refuge units to comply with a Presidential mandate to use plain language in regulations; as such, these particular revisions do not modify the substance of the previous regulations. These types of changes include using "you" to refer to the reader and "we" to refer to the Refuge System, using the word "allow" instead of "permit" when we do not require the use of a permit for an activity, and using active voice (i.e., "We restrict entry into the refuge" vs. "Entry into the refuge is restricted".)

**Statutory Authority***The National Wildlife Refuge System Administration Act of 1966*

(16 U.S.C. 668dd-668ee, as amended by the National Wildlife Refuge System Improvement Act of 1997 [Improvement Act]) (Administration Act) and the Refuge Recreation Act of 1962 (16 U.S.C. 460k-460k-4) (Recreation Act) govern the administration and public use of refuges.

Amendments enacted by the Improvement Act built upon the Administration Act in a manner that provides an "organic act" for the Refuge System similar to those that exist for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the Refuge System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus our Refuge System mission on conservation of fish, wildlife, and plant resources and their habitats. The Improvement Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible with the mission for which the refuge was established. The Improvement Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the Refuge System, through which the American public can develop an appreciation for fish and wildlife. The Improvement Act established six wildlife-dependent recreational uses,



when compatible, as the priority general public uses of the Refuge System. These uses are: Hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop specific management plans for each refuge prior to opening it to hunting or sport fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge and the Refuge System mission. We ensure initial compliance with the Administration Act and the Recreation Act for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and sport fishing in 50 CFR part 32. We ensure continued compliance by the development of comprehensive conservation plans, specific plans, and by annual review of hunting and sport fishing programs and regulations.

### New Hunting and Sport Fishing Programs

In preparation for new openings, we prepare and approve, at the appropriate Regional Office and in Washington, documentation of National Environmental Policy Act (NEPA) and the Endangered Species Act; and we consult with the State and, where appropriate, Tribal wildlife management agency. The Regional Director(s) certify that the opening of these refuges to hunting and/or sport fishing has been found to be compatible with the purpose(s) for which the respective refuge(s) were established and the Refuge System mission. Copies of the compatibility determinations for these respective refuges are available by request to the Regional office noted under the heading "Available Information for Specific Refuges."

The annotated chart below summarizes our proposed changes. The key below the chart explains the symbols used:

TABLE 1.—CHANGES FOR 2008–2009 HUNTING/FISHING

National wildlife refuge	State	Migratory bird hunting	Upland hunting	Big game hunting	Fishing
Agassiz .....	MN .....	B .....	B .....	Previously published.	
Hamden Slough .....	MN .....	A .....	.....	A.	
Blackwater .....	MD .....	B .....	B .....	Previously published .....	Previously published.
Whittlesey Creek .....	WI .....	Previously published .....	.....	B.	
Tensas River .....	LA .....	D .....	D .....	D .....	Previously published.
Upper Ouachita .....	LA .....	D .....	D .....	C/D .....	D.

A = Refuge added and activities opened.

B = Refuge already listed; added hunt category.

C = Refuge already listed; added species to hunt category.

D = Refuge already listed and opened to this activity; added land.

We are adding one refuge to the list of areas open for hunting and/or sport fishing and increasing opportunities at six refuges. We proposed these same changes in the 2006–2007 refuge-specific regulations (71 FR 41864, July 24, 2006) but did not finalize them. We are repropounding these changes with this rulemaking. We have made significant changes to the analysis of impacts under the requirements of the National Environmental Policy Act (NEPA) to address inadequacies in our "opening" process found by Judge Ricardo Urbina in his ruling in *The Fund for Animals v. Dale Hall*, 448 F. Supp. 2d.127, August 31, 2006. We believe that our new NEPA analysis satisfies our legal requirements. Due to the delays experienced because of the lawsuit, no rulemakings were published for the 2007–2008 season.

Bayou Cocodrie National Wildlife Refuge in the State of Louisiana added new lands available to all existing

opportunities, but this did not result in any regulatory changes.

We are removing Stillwater Wildlife Management Area in the State of Nevada from the list of refuges in 50 CFR part 32. The Bureau of Reclamation holds primary jurisdiction over these lands by virtue of a public lands withdrawal for drainage for the 1902 Newlands Reclamation Project. The 1948 Tripartite Agreement with the Service, Nevada Board of Fish and Game Commissioners (Nevada), and the Truckee-Carson Irrigation District (Truckee-Carson) expired and has not been renewed.

We have cross-referenced a number of existing regulations in 50 CFR parts 26, 27, and 32 to assist hunting and sport fishing visitors with understanding safety and other legal requirements on refuges. This redundancy is deliberate, with the intention of improving safety and compliance in our hunting and sport fishing programs.

### Fish Advisory

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can find information about current fish consumption advisories on the Internet at: <http://www.epa.gov/ost/fish/>.

### Request for Comments

You may comment and send materials on this proposed rule by any one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. We will not accept anonymous comments; your comment must include your first and last name, city, State, country, and postal (zip) code. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information in addition to the required items specified in the previous paragraph, such as your street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 670; Arlington, Virginia 22203; (703) 358-2397.

### Public Comment

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. The process of opening refuges is done in stages, with the fundamental work being performed on the ground at the refuge and in the community where the program is administered. In these stages, the public is given other opportunities to comment, for example, on the comprehensive conservation plans, compatibility determinations, and environmental assessments. The second stage is this document, when we publish the proposed rule in the **Federal Register** for additional comment, commonly a 30-day comment period.

We make every attempt to collect all of the proposals from the refuges nationwide and process them expeditiously to maximize the time available for public review. We believe that a 30-day comment period, through the broader publication following the earlier public involvement, gives the public sufficient time to comment and allows us to establish hunting and fishing programs in time for the upcoming seasons. Many of these rules also relieve restrictions and allow the public to participate in recreational activities on a number of refuges. In addition, in order to continue to provide for previously authorized hunting opportunities while at the same time providing for adequate resource protection, we must be timely in providing modifications to certain hunting programs on some refuges.

We considered providing a 60-day, rather than a 30-day, comment period. However, we feel, in conjunction with previous comment periods on other

aspects of this process (comprehensive conservation plans, compatibility determinations, environmental assessments) that 30 days is adequate for public comment. Any additional delay would hinder the effective planning and administration of our hunting and fishing programs.

Even after issuance of a final rule, we accept comments, suggestions, and concerns for consideration for any appropriate subsequent rulemaking.

When finalized, we will incorporate these regulations into 50 CFR part 32. Part 32 contains general provisions and refuge-specific regulations for hunting and sport fishing on refuges.

### Clarity of This Rule

Executive Order (E.O.) 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (e.g., grouping and order of sections, use of headings, paragraphing) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? (6) What else could we do to make the proposed rule easier to understand? Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to: [Execsec@ios.doi.gov](mailto:Execsec@ios.doi.gov).

### Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination on the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, use fees, loan

programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

### Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for "significant impact" and a threshold for a "substantial number of small entities." See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule does not increase the number of recreation types allowed on the System but establishes a hunting program on one refuge and expands activities at six other refuges. As a result, opportunities for wildlife-dependent recreation on national wildlife refuges will increase. The changes in the number of allowed use(s) are likely to increase visitor activity on these national wildlife refuges. Recreational user days are expected to increase by 475 fishing days and 8,352 hunting days. However, this is likely to be a substitute site for the activity and not necessarily an overall increase in participation rates for the activity.

New recreational user days generate expenditures associated with recreational activities on refuges' wilderness areas. Due to the unavailability of site-specific expenditure data, we use the national estimates from the 2001 National Survey of Fishing, Hunting, and Wildlife Associated Recreation to identify expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with the maximum expected additional participation on the Refuge System yields approximately \$68,700 in fishing-

related expenditures and \$831,300 in hunting-related expenditures.

By having ripple effects throughout the economy, these direct expenditures are only part of the economic impact of recreational user days. Using a national impact multiplier for hunting activities (2.73) derived from the report "Economic Importance of Hunting in America" and a national impact multiplier for sportfishing activities (2.79) from the report "Sportfishing in America" for the estimated increase in direct expenditures yields a total economic impact of approximately \$2.4 million (2006 dollars) (Southwick Associates, Inc., 2003). (Using a local impact multiplier would yield more accurate and smaller results. However, we employed the national impact multiplier due to the difficulty in developing local multipliers for each specific region.)

Since most of the fishing and hunting occurs within 100 miles of a participant's residence, it is unlikely that most of this spending would be "new" money coming into a local economy; therefore, this spending would be offset with a decrease in some other sector of the local economy. The net gain to the local economies would be no more than \$2.5 million, and most likely considerably less. Since 80 percent of the participants travel fewer than 100 miles to engage in hunting and fishing activities, their spending patterns would not add new money into the local economy and, therefore, the real impact would be on the order of \$488,000 annually.

To the extent visitors spend time and money in the area of the refuge that they would not have spent there anyway, they contribute new income to the regional economy and benefit local businesses. Many small businesses

within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait and tackle shops) may benefit from some increased refuge visitation. A large percentage of these retail trade establishments in the majority of affected counties qualify as small businesses (Table 2).

We expect that the incremental recreational opportunities will be scattered, and so we do not expect that the rule will have a significant economic effect (benefit) on a substantial number of small entities in any region or nationally. Using the estimate derived in the *Regulatory Planning and Review* section, we expect approximately \$488,000 to be spent in total in the refuges' local economies. The maximum increase (\$2.4 million if all spending were new money) at most would be less than 1 percent for local retail trade spending (Table 2).

TABLE 2.—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2008–2009

[2005 dollars in thousands]

Refuge/county(ies)	Retail trade in 2002	Estimated maximum addition from new activities	Addition as a % of total	Total number retail establish.	Establish. with < 10 emp.
Agassiz:					
Marshall, MN .....	\$80,352	\$4	0.005	43	35
Hamden Slough:					
Becker, MN .....	351,508	16	0.005	159	117
Blackwater:					
Dorchester, MD .....	259,667	48	0.018	123	91
Whittlesey Creek:					
Ashland, WI .....	185,394	2	0.001	94	70
Bayou Cocodrie:					
Concordia, LA .....	135,975	63	0.047	82	60
Tensas River:					
Franklin, LA .....	205,637	53	0.026	83	63
Madison, LA .....	78,207	53	0.068	42	31
Tensas, LA .....	23,931	53	0.222	26	22
Upper Ouachita					
Morehouse, LA .....	231,753	76	0.033	115	91
Union, LA .....	127,496	76	0.059	70	57

With the small increase in overall spending anticipated from this proposed rule, it is unlikely that a substantial number of small entities will have more than a small benefit from the increased spending near the affected refuges. Therefore, we certify that this proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

#### Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This rule:

a. Would not have an annual effect on the economy of \$100 million or more. The additional fishing and hunting opportunities at these refuges would generate angler and hunter expenditures with an economic impact estimated at \$2.4 million per year (2006 dollars). Consequently, the maximum benefit of this rule for businesses both small and

large would not be sufficient to make this a major rule. The impact would be scattered across the country and would most likely not be significant in any local area.

b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This proposed rule would have only a slight effect on the costs of hunting and fishing opportunities for Americans. Under the assumption that any additional hunting and fishing opportunities would be of high quality, participants would be attracted to the refuge. If the refuge were

closer to the participants' residences, then a reduction in travel costs would occur and benefit the participants. The Service does not have information to quantify this reduction in travel cost but assumes that, since most people travel less than 100 miles to hunt and fish, the reduced travel cost would be small for the additional days of hunting and fishing generated by this proposed rule. We do not expect this proposed rule to affect the supply or demand for fishing and hunting opportunities in the United States and, therefore, it should not affect prices for fishing and hunting equipment and supplies, or the retailers that sell equipment. Additional refuge hunting and fishing opportunities would account for less than 0.001 percent of the available opportunities in the United States.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. This proposed rule represents only a small proportion of recreational spending of a small number of affected anglers and hunters, approximately a maximum of \$2.4 million annually in impact. Therefore, this rule would have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of \$72 billion nationwide. Refuges that establish hunting and fishing programs may hire additional staff from the local community to assist with the programs, but this would not be a significant increase because we are opening only one refuge to hunting and only six refuges are increasing activities by this proposed rule.

#### **Unfunded Mandates Reform Act**

Since this proposed rule would apply to public use of federally owned and managed refuges, it would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

#### **Takings (E.O. 12630)**

In accordance with E.O. 12630, this proposed rule would not have significant takings implications. This regulation would affect only visitors at national wildlife refuges and describe what they can do while they are on a refuge.

#### **Federalism (E.O. 13132)**

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this proposed rule would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment under E.O. 13132. In preparing this proposed rule, we worked with State governments.

#### **Civil Justice Reform (E.O. 12988)**

In accordance with E.O. 12988, the Office of the Solicitor has determined that the proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation would clarify established regulations and result in better understanding of the regulations by refuge visitors.

#### **Energy Supply, Distribution or Use (E.O. 13211)**

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this proposed rule would add one refuge to the list of areas open for hunting and increase the activities at six refuges, it is not a significant regulatory action under E.O. 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

#### **Consultation and Coordination With Indian Tribal Governments (E.O. 13175)**

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on national wildlife refuges with Tribal governments having adjoining or overlapping jurisdiction before we propose the regulations.

#### **Paperwork Reduction Act**

This regulation does not contain any information collection requirements other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (OMB Control Number is 1018-0102). See 50 CFR 25.23 for information concerning that approval. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB

control number. We will ask OMB to approve necessary information collection(s).

#### **Endangered Species Act Section 7 Consultation**

In preparation for new openings, we comply with Section 7 of the Endangered Species Act. Copies of the Section 7 evaluations may be obtained by contacting the regions listed under *Available Information for Specific Refuges*. For the proposals to open or to add opportunities at national wildlife refuges for hunting and/or fishing, we have determined that at Hamden Slough National Wildlife Refuge, and Tensas River National Wildlife Refuge, the actions are not likely to adversely affect listed species or designated critical habitat. For the proposals at Whittlesey Creek National Wildlife Refuge and Blackwater National Wildlife Refuge, we have determined the actions will have no effect on any listed species or critical habitat. For Bayou Cocodrie National Wildlife Refuge, Upper Ouachita National Wildlife Refuge, and Agassiz National Wildlife Refuge, we have determined the actions may affect but are not likely to adversely affect listed species/critical habitat.

We also comply with Section 7 of the ESA when developing comprehensive conservation plans (CCPs) and step-down management plans for public use of refuges, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32.

#### **National Environmental Policy Act**

Based upon review of the refuge-specific Environmental Assessments for the opening of new or expansion of existing hunting programs on 7 national wildlife refuges (Agassiz NWR, Hamden Slough NWR, Blackwater NWR, Whittlesey Creek, Bayou Cocodrie NWR, Tensas River NWR, and Upper Ouachita NWR), and of associated documentation referenced below, it is our determination that the action of opening or expanding hunting programs on these 7 refuges as described and which will be codified by rulemaking in 2008, does not constitute a major Federal action significantly affecting the quality of the human environment under the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (as amended). As such, an environmental impact statement is not required.

We have further prepared a Cumulative Impact Report that analyzes the cumulative impacts of these proposed openings. In this Report we evaluate cumulative impacts within the context of the new and expanded

hunting and fishing programs on the seven refuges combined and within the context of hunting and fishing programs on the Refuge System as a whole.

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop hunting and fishing plans for the affected refuges. We incorporate these proposed refuge hunting and fishing activities in the refuge CCPs and/or other step-down management plans, pursuant to our refuge planning guidance in 602 Fish and Wildlife Service Manual (FW) 1, 3, and 4. We prepare these CCPs and step-down plans in compliance with section 102(2)(C) of NEPA and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500–1508. We invite the affected public to participate in the review, development, and implementation of these plans. Copies of all plans and NEPA compliance are available from the refuges at the addresses provided below.

#### Available Information for Specific Refuges

Individual refuge headquarters retain information regarding public use programs and conditions that apply to their specific programs and maps of their respective areas. If the specific refuge you are interested in is not mentioned below, then contact the appropriate Regional offices listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, OR 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Box 1306, 500 Gold Avenue, Albuquerque, NM 87103; Telephone (505) 248–7419.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1 Federal Drive, Federal Building, Fort Snelling, Twin Cities, MN 55111; Telephone (612) 713–5401. Hamden Slough National Wildlife Refuge, 21212 210th Street, Audubon, Minnesota 56511; Telephone (218) 439–6319.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century

Boulevard, Atlanta, GA 30345; Telephone (404) 679–7166.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589; Telephone (413) 253–8306.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, CO 80228; Telephone (303) 236–8145.

Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, AK 99503; Telephone (907) 786–3545.

#### Primary Author

Leslie A. Marler, Management Analyst, Division of Conservation Planning and Policy, National Wildlife Refuge System, is the primary author of this rulemaking document.

#### List of Subjects in 50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

For the reasons set forth in the preamble, we propose to amend title 50, Chapter I, subchapter C of the Code of Federal Regulations as follows:

#### PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

2. Amend § 32.7 “What refuge units are open to hunting and/or sport fishing?” by:

a. Adding Hamden Slough National Wildlife Refuge in the State of Minnesota; and

b. Removing Stillwater Wildlife Management Area in the State of Nevada.

3. Amend § 32.37 Louisiana by:

a. Revising paragraphs A.3., A.5., A.6., A.9., A.11., A.12, B.2., B.6. and B.7, adding paragraphs B.8 through B.10., and revising paragraph C. of Tensas River National Wildlife Refuge; and

b. Revising paragraphs A., B., and C. of Upper Ouachita National Wildlife Refuge to read as follows:

#### § 32.37 Louisiana.

\* \* \* \* \*

#### Tensas River National Wildlife Refuge

##### A. Migratory Game Bird Hunting.

\* \* \*

\* \* \* \* \*

3. We allow refuge hunters to enter the refuge no earlier than 4 a.m., and they must depart no later than 2 hours after legal sunset unless they are participating in the refuge raccoon hunt.

\* \* \*

5. We allow shotguns equipped with a single-piece magazine plug that allows the gun to hold no more than two shells in the magazine and one in the chamber. We prohibit target practicing or shooting to unload modern firearms on the refuge at any time. Shotgun hunters must possess only an approved nontoxic shot when hunting migratory birds (see § 32.2(k)). We require hunters to unload and encase all guns transported in automobiles and boats or on all-terrain vehicles (see § 27.42(b) of this chapter). We allow firearms on the refuge only during the refuge hunting season.

6. We prohibit permanent or pit blinds on the refuge. You must remove all blind material and decoys following each day's hunt (see § 27.93 of this chapter).

\* \* \*

9. We prohibit baiting or the possession of bait at any time while on the refuge (see § 32.2(h)).

\* \* \*

11. While visiting the refuge, we prohibit: Spotlighting, littering, fires, trapping, mandrives for game, possession of alcoholic beverages in hunting areas, possession of open alcoholic beverage containers, flagging, engineers tape, paint, unleashed pets, and parking/blocking trail and gate entrances. We prohibit hunting within 150 feet (45 m) of: A designated public road, maintained road, trail, fire breaks, dwellings, and above-ground oil and gas production facilities. We define a maintained road or trail as one which has been mowed, disked, or plowed.

12. We require a Tensas River National Wildlife Refuge Access Permit for all migratory bird hunts. You will find the permits on the front of the Public Use Regulation brochure.

\* \* \*

##### B. Upland Game Hunting. \* \* \*

\* \* \*

2. We allow squirrel and rabbit hunting with and without dogs. We will allow hunting without dogs from the beginning of the State season to a date typically ending the day before the refuge deer muzzleloader hunt. We do not require hunters to wear hunter orange during the squirrel and rabbit hunt without dogs. Squirrel and rabbit

hunting will begin again, with or without dogs, the day after the refuge deer muzzleloader hunt and will conclude the last day of the refuge squirrel season which typically ends on February 15.

\* \* \* \* \*

6. We allow .22 caliber rimfire weapons and shotguns equipped with a single-piece magazine plug that allows the gun to hold no more than two shells in the magazine and one in the chamber. We prohibit target practicing or shooting to unload modern firearms on the refuge at any time. Shotgun hunters must possess only an approved nontoxic shot when hunting upland game (see § 32.2(k)). We require hunters to unload and encase all guns transported in automobiles and boats or on all-terrain vehicles (see § 27.42(b) of this chapter). We define loaded as shells in gun or caps on muzzleloader. We allow firearms on the refuge only during the refuge hunting season.

7. We require all upland game hunters to report their game immediately after each hunt at the check station nearest the point of take.

8. Conditions A7, A10, A11, and A13 apply.

9. We prohibit any hunter to use climbing spikes or to hunt from a tree that contains screw-in steps, nails, screw-in umbrellas, or any metal objects that could damage trees (see § 32.2(i)).

10. We require a Tensas River National Wildlife Refuge Access Permit for all upland game hunts. Hunters will find permits on the front of the Public Use Regulations brochure.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

1. Deer archery season will begin the first Saturday in November and will conclude on the last day of the State archery season which is generally January 31. We require that archery hunters, including crossbow hunters, possess proof of completion of the International Bowhunters Safety Course. We prohibit archery hunting during the following refuge-wide deer hunts: Youth gun hunt and modern firearms hunts. We prohibit possession of pods, drug-tipped arrows, or other chemical substances.

2. Deer muzzleloader season will be 3 days and occur on a Monday, Tuesday, and Wednesday in January. We will allow in-line muzzleloaders and magnified scopes.

3. We will conduct two 2-day quota modern firearms hunts for deer typically in the month of December. Hunt dates and permit application procedures will

be available at Refuge Headquarters in July. We restrict hunters using a muzzleloader during this hunt to areas where we allow modern firearms.

4. We will conduct guided quota youth deer hunts and guided quota physically challenged deer hunts in the Greenlea Bend area typically in December and January. Hunt dates and permit application procedures will be available at the Refuge Headquarters in July.

5. We will conduct a refuge-wide youth deer hunt during the State-wide youth hunt weekend typically in November. Hunt dates will be available at Refuge Headquarters in July. Each participating youth must: Be age 8–15, possess proof of completion of an approved Hunter Safety Course, and be accompanied at all times by an adult age 21 or older. Each adult hunter may supervise only one youth.

6. Hunters may take only one deer (one buck or one doe) per day during refuge deer hunts except during guided youth and physically challenged hunts where the limit will be one antlerless and one antlered deer per day.

7. We allow turkey hunting the first 16 days of the State turkey season. We will conduct a youth turkey hunt the Saturday and Sunday before the regular State turkey season. You may harvest two bearded turkeys per season. We allow the use and possession of lead shot while turkey hunting on the refuge (see § 32.2(k)). We allow use of nonmotorized bicycles on designated all-terrain vehicle trails. Although you may hunt turkeys without displaying a solid hunter orange cap or vest during your turkey hunt, we do recommend its use.

8. Conditions A3, A7, A9, A11, A13, and B9 apply.

9. In areas posted “Closed Area,” we prohibit big game hunting at any time. “Closed Area”(s), which we designate on the Public Use Regulations brochure map, are closed to all hunts.

10. We allow shotguns that are equipped with a single-piece magazine plug that allows the gun to hold no more than two shells in the magazine and one in the chamber. We allow shotgun hunters to use rifled slugs only when hunting deer. We prohibit hunters using or possessing buckshot while on the refuge. We prohibit target practicing or shooting to unload modern firearms on the refuge at any time. We require hunters to unload and encase all guns transported in automobiles and boats or on all-terrain vehicles (see § 27.42(b) of this chapter). We define loaded as shells in gun or caps on muzzleloader. We allow firearms on the refuge only during the refuge hunting season.

11. We allow muzzleloader hunters to discharge their muzzleloaders at the end of each hunt safely into the ground at least 150 feet (45 m) from any designated public road, maintained road, trail, fire breaks, dwellings, or above-ground oil and gas production facilities. We define a maintained road or trail as one which has been mowed, disked, or plowed and one which is free of trees.

12. We prohibit deer hunters leaving deer stands unattended before the opening day of the refuge archery season, and hunters must remove stands by the end of the last day of the refuge archery season. Hunters must clearly mark stands left unattended on the refuge with the name and address of the owner of the stand. Hunters must remove portable stands from trees daily and place freestanding stands in a nonhunting position when unattended.

13. We require deer hunters using muzzleloaders or modern firearms to display a solid hunter-orange cap on their head and a solid hunter-orange vest over their outermost garment covering their chest and back. Hunters must display the solid hunter-orange items at all times while in the field.

14. We require muzzleloader and modern firearms hunters utilizing ground blinds to display 400 square inches (2,600 cm<sup>2</sup>) of hunter orange outside of the blind that is visible from all sides of the blind. Hunters must wear orange vests and hats as their outermost garments while inside the blind.

15. We require all deer and turkey hunters to report their game immediately after each hunt at the check station nearest to the point of take.

16. We prohibit baiting or the possession of bait while on the refuge at any time. We prohibit possession of chemical baits or attractants used as bait.

17. We require a Tensas River National Wildlife Refuge Access Permit for all big game hunts. You will find the permits on the front of the Public Use Regulations brochure.

\* \* \* \* \*

## Upper Ouachita National Wildlife Refuge

*A. Migratory Game Bird Hunting.* We allow hunting of waterfowl (duck, goose, coot, gallinule, rail, snipe), woodcock, and dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must possess and carry a signed refuge permit.

2. We allow waterfowl hunting on the west side of the Ouachita River north of

RCW Road. We allow waterfowl hunting on the east side of the Ouachita River outside the Mollicy levee and south of the crude oil pipeline which runs through Township 22N range 4E sections 2, 3, 4 within the levee.

3. We allow woodcock hunting west of the Ouachita River. We allow woodcock hunting on the east side of the Ouachita River outside the Mollicy levee and south of the crude oil pipeline which runs through Township 22N range 4E sections 2, 3, 4 within the levee.

4. We allow dove hunting during the first 3 days of the State season east of the Ouachita River outside the Mollicy levee and south of the crude oil pipeline which runs through Township 22N range 4E sections 2, 3, 4 within the levee.

5. We allow waterfowl hunting until 12 p.m. (noon) during the State season.

6. We will hold a limited youth waterfowl lottery hunt during the State Youth Waterfowl Hunt. Application instructions are available at the refuge office.

7. Hunters may enter the refuge no earlier than 4 a.m.

8. We prohibit hunting within 100 feet (30 m) of the maintained rights of ways of roads, from or across ATV trails, and from above-ground oil, gas, or electrical transmission facilities.

9. We prohibit leaving boats, blinds, and decoys unattended.

10. We allow dogs to locate, point, and retrieve when hunting for migratory game birds. We prohibit the use of dogs for hog hunting.

11. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult may supervise no more than two youth hunters.

12. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that pay other individual(s), pays or promises to pay directly or indirectly for service rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

**B. Upland Game Hunting.** We allow hunting of quail, squirrel, rabbit, raccoon, beaver, coyote, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A8, A9, A11, and A12 (to hunt upland game) apply.

2. We allow hunting west of the Ouachita River. We allow hunting on

the east side of the Ouachita River outside the Mollicy levee and south of the crude oil pipeline which runs through Township 22N range 4E sections 2,3,4 within the levee.

3. We prohibit possession of firearms larger than .22 caliber rimfire, shotgun slugs, and buckshot.

4. We allow hunting of raccoon and opossum during the daylight hours (legal sunrise to legal sunset) of rabbit and squirrel season. We allow night hunting (legal sunset to legal sunrise) during December and January, and we allow use of dogs for night hunting. We prohibit the selling of raccoon and opossum taken on the refuge for human consumption.

5. We allow the use of dogs to hunt squirrel and rabbit after the last refuge Gun Deer Hunt.

6. To use horses and mules to hunt raccoon and opossum at night, hunters must first obtain a special permit at the refuge office.

7. Hunters may enter the refuge no earlier than 4 a.m. and must exit no later than 2 hours after legal shooting hours.

8. We allow hunting of beaver and coyote during all open refuge hunts with weapons legal for the ongoing hunt.

**C. Big Game Hunting.** We allow hunting of white-tailed deer, feral hog, and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A8, A9, A12 (to hunt big game), and B7 apply.

2. We allow general gun deer hunting on the following days: The first consecutive Saturday and Sunday of November; the Friday, Saturday, and Sunday following Thanksgiving Day; and the second Saturday and Sunday after Thanksgiving Day. We allow archery deer hunting during the entire State season.

3. We allow deer and feral hog hunting west of the Ouachita River. We allow deer hunting on the east side of the Ouachita River outside the Mollicy levee and south of the crude oil pipeline which runs through Township 22N range 4E sections 2, 3, 4 within the levee.

4. The daily bag limit is one either-sex deer. The State season limit applies.

5. Archery hunters must possess and carry proof of completion of the International Bowhunters' Education Program.

6. We prohibit leaving deer stands, blinds, and other equipment unattended.

7. Deer hunters must wear hunter orange as per State deer hunting

regulations on Wildlife Management Areas.

8. We prohibit hunters placing stands or hunting from stands on pine trees with white-painted bands/rings.

9. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult may supervise no more than one youth hunter.

10. We will hold a limited lottery youth turkey hunt on the Saturday of the State youth turkey hunt weekend.

11. We prohibit possession or distribution of bait or hunting with the aid of bait, including any grain, salt, minerals, or other feed or nonnaturally occurring attractant on the refuge (see § 32.2(h)).

12. We allow hunting of hog during all open refuge hunts with weapons legal for the ongoing hunt.

\* \* \* \* \*

4. Amend § 32.39 Maryland by revising paragraphs A. and B. of Blackwater National Wildlife Refuge to read as follows:

#### **§ 32.39 Maryland.**

\* \* \* \* \*

#### **Blackwater National Wildlife Refuge**

**A. Migratory Game Bird Hunting.** We allow hunting of goose and duck on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require refuge permits for all hunters regardless of age. We require that hunters possess a valid State hunting license, any required stamps, and a photo identification. Permits are nontransferable.

2. All refuge hunters must abide by the terms and conditions of the refuge permit.

**B. Upland Game Hunting.** We allow hunting of eastern wild turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions: Conditions A1 and A2 apply.

\* \* \* \* \*

5. Amend § 32.42 Minnesota by:  
a. Revising Agassiz National Wildlife Refuge; and  
b. Adding Hamden Slough National Wildlife Refuge to read as follows:

#### **§ 32.42 Minnesota.**

\* \* \* \* \*

#### **Agassiz National Wildlife Refuge**

**A. Migratory Game Bird Hunting.** We allow hunting of waterfowl on the



Farmers Pool Unit area of the refuge in accordance with State regulations subject to the following conditions:

1. We allow a youth hunt only (age 16 and under). Youth hunters age 14 and under must be accompanied by an adult age 18 or older.

2. We prohibit vehicles and hunters from entering the refuge before 5:30 a.m. They must leave the refuge each day as soon as possible after legal hunting hours.

3. We prohibit the use of motorized boats.

4. We prohibit the construction or use of permanent blinds, stands, or scaffolds (see § 27.92 of this chapter).

5. You must remove all personal property, which includes boats, decoys, and blinds brought onto the refuge, each day of hunting (see §§ 27.93 and 27.94 of this chapter).

6. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times.

7. We prohibit the use of snowmobiles and ATVs.

8. We prohibit camping.

*B. Upland Game Hunting.* We allow hunting of ruffed grouse and sharp-tailed grouse on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting from the opening of the State's deer firearms season to the close of the regular State's ruffed grouse and sharp-tailed grouse seasons.

2. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

3. We prohibit hunting in the closed areas around the administrative buildings.

4. Conditions A2 through A8 apply.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and moose on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We are currently closed to moose hunting until the population recovers.

2. Conditions A1, A3, A4, A5, A7, and A8 apply.

3. We allow scouting the day before the youth deer hunt and the deer firearms hunt.

4. We open archery hunting at the start of the State's deer firearms season and close according to the State's archery deer season.

5. We allow muzzleloader deer hunting following the State's muzzleloader season.

6. Hunters may use portable stands. We prohibit construction or use of permanent blinds, permanent platforms, or permanent ladders.

7. You must remove all stands and personal property from the refuge by legal sunset of each day (see §§ 27.93 and 27.94 of this chapter).

8. We prohibit hunters from occupying illegally set up or constructed ground and tree stands (see condition C2).

9. We allow the use of wheeled, nonmotorized conveyance devices (e.g., bikes, retrieval carts) except in Wilderness Areas.

10. We prohibit vehicles and hunters from entering the refuge during the youth deer hunt until after 6 a.m.

*D. Sport Fishing.* [Reserved]

\* \* \* \* \*

#### **Hamden Slough National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of waterfowl on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow waterfowl hunting during the State's Youth Waterfowl Day.

2. Youth waterfowl hunters must be age 15 and under.

3. We will only allow waterfowl hunting in refuge tracts within Audubon and Riceville Townships.

4. We prohibit the use of motorized boats.

5. We prohibit the construction or use of permanent blinds, stands, or scaffolds.

6. You must remove all personal property, which includes boats, decoys, blinds, and blind materials (except for blinds made entirely of marsh vegetation) brought onto the refuge, following that day's hunt (see §§ 27.93 and 27.94 of this chapter).

7. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season.

8. We prohibit entry to hunting areas earlier than 2 hours before legal shooting hours.

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow hunting during the State's muzzleloader season with muzzleloaders.

2. Hunters may use portable stands. We prohibit construction or use of permanent blinds, permanent platforms, or permanent ladders.

3. Hunters must remove all stands and personal property from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

4. Condition A8 applies.

*D. Sport Fishing.* [Reserved]

\* \* \* \* \*

6. Amend § 32.69 Wisconsin by revising paragraph C. of Whittlesey Creek National Wildlife Refuge to read as follows:

#### **§ 32.69 Wisconsin.**

\* \* \* \* \*

#### **Whittlesey Creek National Wildlife Refuge**

\* \* \* \* \*

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We will allow archery deer hunting to take place on refuge lands owned by the Service that constitute tracts greater than 20 acres (8 ha).

2. We prohibit hunting within a designated, signed area around the Coaster Classroom and Northern Great Lakes Visitor Center boardwalk.

3. We prohibit the construction or use of permanent blinds or platforms.

4. Hunters may use ground blinds or any elevated stands only if they do not damage live vegetation, including trees (see § 27.61 of this chapter).

5. Hunters may construct ground blinds entirely of dead vegetation from the refuge lands.

6. Hunters must remove all stands and blinds from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

7. We allow motorized vehicles only on public roads and parking areas (see § 27.31 of this chapter).

\* \* \* \* \*

Dated: April 2, 2008.

**David M. Vehrey,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E8-12193 Filed 6-10-08; 8:45 am]

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# Federal Register

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**Wednesday,  
June 11, 2008**

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## **Part IV**

## **Department of the Interior**

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**Fish and Wildlife Service**

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**50 CFR Part 18**

**Marine Mammals; Incidental Take During  
Specified Activities; Final Rule**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 18**

[FWS-R7-FHC-2008-0040; 71490-1351-0000-L5]

RIN 1018-AU41

**Marine Mammals; Incidental Take During Specified Activities**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Fish and Wildlife Service (Service or we) has developed regulations that authorize the nonlethal, incidental, unintentional take of small numbers of Pacific walrus (*Odobenus rosmarus divergens*) and polar bears (*Ursus maritimus*) during oil and gas industry (Industry) exploration activities in the Chukchi Sea and adjacent western coast of Alaska. This rule will be effective for 5 years from date of issuance. We find that the total expected takings of Pacific walrus (walrus) and polar bears during Industry exploration activities will impact small numbers of animals, will have a negligible impact on these species, and will not have an unmitigable adverse impact on the availability of these species for subsistence use by Alaska Natives. The regulations include: permissible methods of nonlethal taking; measures to ensure that Industry activities will have the least practicable adverse impact on the species and their habitat, and on the availability of these species for subsistence uses; and requirements for monitoring and reporting. The Service will issue Letters of Authorization (LOAs) to conduct activities under the provisions of these regulations.

**DATES:** This rule is effective June 11, 2008, and remains effective through June 11, 2013. We find that it is appropriate to make this rule effective immediately because it relieves restrictions that would otherwise apply under the Marine Mammal Protection Act and therefore section 553(d)(1) of the Administrative Procedure Act applies.

**FOR FURTHER INFORMATION CONTACT:** Craig Perham, Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, telephone 907-786-3810 or 1-800-362-5148, or e-mail [R7\\_MMM\\_Comment@fws.gov](mailto:R7_MMM_Comment@fws.gov).

**SUPPLEMENTARY INFORMATION:****Background**

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(a)(5)(A)) gives the Secretary of the Interior (Secretary) through the Director of the Service (we) the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to requests by U.S. citizens (you) [as defined in 50 CFR 18.27(c)] engaged in a specified activity (other than commercial fishing) in a specified geographic region. According to the MMPA, we shall allow this incidental taking if (1) we make a finding that the total of such taking for the 5-year regulatory period will have no more than a negligible impact on these species and will not have an unmitigable adverse impact on the availability of these species for taking for subsistence use by Alaska Natives, and (2) we issue regulations that set forth (i) permissible methods of taking, (ii) means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses, and (iii) requirements for monitoring and reporting. If we issue regulations allowing such incidental taking, we can issue LOAs to conduct activities under the provisions of these regulations when requested by citizens of the United States.

The term "take," as defined by the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment, as defined by the MMPA, for activities other than military readiness activities or scientific research conducted by or on behalf of the Federal Government, means "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild" [the MMPA calls this Level A harassment] "or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering" [the MMPA calls this Level B harassment] (16 U.S.C. 1362).

The terms "small numbers," "negligible impact," and "unmitigable adverse impact" are defined in 50 CFR 18.27 (i.e., regulations governing small takes of marine mammals incidental to specified activities) as follows. "Small numbers" is defined as "a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock." "Negligible impact" is "an impact resulting from the

specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." "Unmitigable adverse impact" means "an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met."

Industry conducts activities, such as oil and gas exploration, in marine mammal habitat that could result in the taking of marine mammals. Although Industry is under no legal requirement to obtain incidental take authorization, since 1991, Industry has requested, and we have issued regulations for, incidental take authorization for conducting activities in areas of walrus and polar bear habitat. We issued incidental take regulations for walrus and polar bears in the Chukchi Sea for the period 1991-1996 (56 FR 27443; June 14, 1991). In the Beaufort Sea, incidental take regulations have been issued from 1993 to present: November 16, 1993 (58 FR 60402); August 17, 1995 (60 FR 42805); January 28, 1999 (64 FR 4328); February 3, 2000 (65 FR 5275); March 30, 2000 (65 FR 16828); November 28, 2003 (68 FR 66744); and August 2, 2006 (71 FR 43926). These regulations are at 50 CFR part 18, subpart J (§§ 18.121-18.129).

**Summary of Current Request**

On August 5, 2005, the Alaska Oil and Gas Association (AOGA), on behalf of its members, (Agrium Kenai Nitrogen Operations, Alyeska Pipeline Service Company, Anadarko Petroleum Corporation, BP Exploration (Alaska) Inc., Chevron, Eni Petroleum, ExxonMobil Production Company, Flint Hills Resources, Alaska, Forest Oil Corporation, Marathon Oil Company, Petro-Canada (Alaska) Inc., Petro Star Inc., Pioneer Natural Resources Alaska, Inc., Shell Exploration & Production Company, Tesoro Alaska Company, and XTO Energy, Inc.) requested that the Service issue regulations to allow the nonlethal, incidental take of small numbers of walrus and polar bears in the Chukchi Sea for a period of 5 years. The Service requested additional information from AOGA regarding the nature, scope, and location of proposed

activities for its analysis of potential impacts on walruses, polar bears, and subsistence harvests of these resources. On November 22, 2006, Shell Offshore Inc. (SOI) provided an addendum to the AOGA petition describing SOI's projected activities for 2007–2012.

On January 2, 2007, AOGA, on behalf of its members, also provided an addendum to its original petition referencing a Draft Environmental Impact Statement prepared by the Minerals Management Service (MMS) for the Chukchi Sea Planning Area: Oil and Gas Lease Sale 193 and Seismic Surveying Activities in the Chukchi Sea (Chukchi Sea DEIS). The Chukchi Sea DEIS included estimates of all reasonably foreseeable oil and gas activities associated with proposed Outer Continental Shelf (OCS) lease sales in the Chukchi Sea Planning Area. The AOGA petition requested that the Service consider activities described in the Chukchi Sea DEIS for the period 2007–2012. On January 2, 2007, ConocoPhillips Alaska, Inc. (CPAI), also provided an addendum to the original AOGA petition describing CPAI's projected activities from 2007–2012. The petition and addendums are available at: ([Alaska.fws.gov/fisheries/mmm/itr.htm](http://Alaska.fws.gov/fisheries/mmm/itr.htm)). The Chukchi Sea DEIS, referenced in the AOGA petition, has subsequently been finalized and is available at [http://www.mms.gov/alaska/ref/EIS%20EA/Chukchi\\_feis\\_Sale193/feis\\_193.htm](http://www.mms.gov/alaska/ref/EIS%20EA/Chukchi_feis_Sale193/feis_193.htm) (OCS EIS/EA MMS 2007–026).

The combined requests are for regulations to allow the incidental, nonlethal take of small numbers of walruses and polar bears in association with oil and gas activities in the Chukchi Sea and adjacent coastline projected out to the year 2012. The information provided by the petitioners indicates that projected oil and gas activities over this timeframe will be limited to exploration activities. Development and production activities were not considered in the requests. The petitioners have also specifically requested that these regulations be issued for nonlethal take. The petitioners have indicated that, through the implementation of appropriate mitigation measures, they are confident that no lethal take will occur.

Prior to issuing regulations in response to this request, we must evaluate the level of industrial activities, their associated potential impacts to walruses and polar bears, and their effects on the availability of these species for subsistence use. All projected exploration activities described by SOI, CPAI, and AOGA (on behalf of its members) in their petitions,

as well as projections of reasonably foreseeable activities for the period 2007–2012 described in the Chukchi Sea EIS were considered in our analysis. The activities and geographic region specified in the requests, and considered in these regulations are described in the ensuing sections titled “Description of Geographic Region” and “Description of Activities.”

#### Description of Regulations

The regulations are limited to the nonlethal, incidental take of small numbers of walruses and polar bears associated with oil and gas exploration activities (geophysical seismic surveys, exploratory drilling, and associated support activities) in the Chukchi Sea and adjacent coast of Alaska and would be effective for a period of up to 5 years from the date of issuance. We assessed the geographic region, as outlined in the “Description of Geographic Region,” and the type of industrial activities, as outlined in the “Description of Activities” section. No development or production activities are anticipated over this timeframe, or included in the regulations.

The total estimated level of activity covered by these regulations, as outlined in the “Description of Activities” section, was based on all projected exploration activities described by SOI, CPAI, and AOGA (on behalf of its members) in their petitions, as well as projections of reasonably foreseeable activities for the period 2007–2012 described in the Chukchi Sea EIS. If the level of activity is more than anticipated, such as additional support vessels or aircraft, more drilling units, or more miles of geophysical surveys, the Service must re-evaluate its findings to determine if they continue to be appropriate.

It is important to note that these regulations do not authorize, or “permit,” the actual activities associated with oil and gas exploration in the Chukchi Sea. Rather, they will authorize the nonlethal incidental, unintentional take of small numbers of walruses and polar bears associated with those activities based on standards set forth in the MMPA. The MMS, the U.S. Army Corps of Engineers (COE), and the Bureau of Land Management (BLM) are responsible for permitting activities associated with oil and gas activities in Federal waters and on Federal lands. The State of Alaska is responsible for permitting activities on State lands and in State waters.

The regulations include permissible methods of nonlethal taking, measures to ensure the least practicable adverse impact on the species and the

availability of these species for subsistence uses, and requirements for monitoring and reporting. The process for nonlethal incidental take regulations will be that persons seeking taking authorization for particular projects must apply for an LOA to cover nonlethal take associated with specified exploration activities under the regulations. Each group or individual conducting Industry-related activity within the area covered by these regulations may request an LOA.

A separate LOA is mandatory for each activity, (i.e., geophysical survey, seismic activity, and exploratory drilling operation). We must receive applications for LOAs at least 90 days before the activity is to begin.

Applicants for LOAs must submit an Operations Plan for the activity, a polar bear interaction plan, and a site-specific marine mammal monitoring and mitigation plan to monitor the effects of authorized activities on walruses and polar bears. A report on all exploration and monitoring activities must be submitted to the Service within 90 days after the completed activity. Details of monitoring and reporting requirements are further described in “Potential Effects of Oil and Gas Industry Activities on Pacific Walruses and Polar Bears.”

Depending upon the nature, timing, and location of a proposed activity, applicants may also have to develop a Plan of Cooperation (POC) with potentially affected subsistence communities to minimize interactions with subsistence users. The POC is further described in “Potential Effects of Oil and Gas Industry Activities on Subsistence Uses of Pacific Walruses and Polar Bears.”

We will evaluate each request for an LOA based upon the specific activity and the specific location. Each authorization will identify allowable methods or conditions specific to that activity and location. For example, we will consider seasonal or location-specific restrictions to limit interactions between exploration activities and walrus aggregations, or interference with subsistence hunting activities. Individual LOAs will include monitoring and reporting requirements specific to each activity, as well as any measures necessary for mitigating impacts to these species and the subsistence use of these species. The granting of each LOA will be based on a determination that the total level of taking by all applicants in any one year is consistent with the estimated level used to make a finding of negligible impact and a finding of no unmitigable adverse impacts on the availability of

the species or the stock for subsistence uses. We will publish in the **Federal Register** a notice of issuance of LOAs. More information on applying for and receiving an LOA can be found at 50 CFR 18.27(f).

The status of polar bears range wide was reviewed for potential listing under the Endangered Species Act and was listed as threatened on May 15, 2008 (73 FR 28212). The Service conducted an intra-Service section 7 consultation for these regulations, which resulted in a "no jeopardy" conclusion and developed a process to incorporate section 7 consultations under the ESA into the established framework for processing LOAs.

### Description of Geographic Region

These regulations will allow Industry operators to incidentally take small numbers of Pacific walruses and polar bears within the same area, hereafter referred to as the Chukchi Sea Region (Figure 1). The geographic area covered by the request is the continental shelf of the Arctic Ocean adjacent to western Alaska. This area includes the waters (State of Alaska and OCS waters) and seabed of the Chukchi Sea, which encompasses all waters north and west of Point Hope (68°20'20" N, -166°50'40" W, BGN 1947) to the U.S.-Russia Convention Line of 1867, west of a north-south line through Point Barrow (71°23'29" N, -156°28'30" W, BGN 1944), and up to 200 miles north of Point Barrow. The region includes that area defined as the MMS OCS oil and gas Lease Sale 193 in the Chukchi Sea Planning Area. The region also includes the terrestrial coastal land 25 miles inland between the western boundary of the south National Petroleum Reserve-Alaska (NPR-A) near Icy Cape (70°20'00", -148°12'00") and the north-south line from Point Barrow. The geographic region encompasses an area of approximately 90,000 square miles. This terrestrial region encompasses a portion of the Northwest and South Planning Areas of the NPR-A. It is noteworthy that the north-south line at Point Barrow is the western border of the geographic region in the Beaufort Sea incidental take regulations (71 FR 43926; August 2, 2006).

### Description of Activities

This section reviews the types and scale of oil and gas activities projected to occur in the Chukchi Sea Region over the specified time period (2007–2012). This information is based upon information provided by the petitioners and referenced in the Chukchi Sea EIS. The Service has used these descriptions of activity as a basis for its findings. If

requests for LOAs exceed the projected scope of activity analyzed under these regulations, the Service will reevaluate its findings to determine if they continue to be appropriate before further LOAs are issued.

The Service does not know the specific locations where oil and gas exploration will occur over the proposed regulatory period. The location and scope of specific activities will be determined based on a variety of factors, including the outcome of future Federal and State oil and gas lease sales and information gathered through subsequent rounds of exploration discovery. The information provided by the petitioners indicates that offshore exploration activities will be carried out during the open water season to avoid seasonal pack ice. Onshore exploration activities are not expected to occur in the vicinity of known polar bear denning areas or coastal walrus haulouts.

Incidental take regulations do not authorize the placement and location of Industry activities; they can only authorize incidental nonlethal take of walruses and polar bears. Allowing the activity at particular locations is part of the permitting process that is authorized by the lead permitting agency, such as the COE or BLM. The specific dates and durations of the individual operations and their geographic locations will be provided to the Service in detail when requests for LOAs are submitted.

Oil and gas activities anticipated and considered in our analysis of incidental take regulations include: (1) Marine-streamer 3D and 2D seismic surveys; (2) high-resolution site-clearance surveys; (3) offshore exploration drilling; (4) onshore seismic exploration and exploratory drilling; (5) and the associated support activities for the afore-mentioned activities. Descriptions of these activities follow.

#### *Marine-Streamer 3D and 2D Seismic Surveys*

Marine seismic surveys are conducted to locate geological structures potentially capable of containing petroleum accumulations. Air guns are the typical acoustic (sound) source for 2-dimensional and 3-dimensional (2D and 3D, respectively) seismic surveys. An outgoing sound signal is created by venting high-pressure air from the air guns into the water to produce an air-filled cavity (bubble) that expands and contracts. A group of air guns is usually deployed in an array to produce a downward-focused sound signal. Air gun array volumes for both 2D and 3D seismic surveys are expected to range from 1,800–6,000 cubic inches (in<sup>3</sup>). The

air guns are fired at short, regular intervals, so the arrays emit pulsed rather than continuous sound. While most of the energy is focused downward and the short duration of each pulse limits the total energy into the water column, the sound can propagate horizontally for several kilometers.

A 3D source array typically consists of two to three sub-arrays of six to nine air guns each, and is about 12.5–18 meters (m) long and 16–36 m wide. The size of the source-array can vary during the seismic survey to optimize the resolution of the geophysical data collected at any particular site. Vessels usually tow up to three source arrays, depending on the survey-design specifications. Most 3D operations use a single source vessel; however, in a few instances, more than one source vessel may be used. The sound-source level (zero-to-peak) associated with typical 3D seismic surveys ranges between 233 and 240 decibels at 1 meter (re 1 µPa at 1 m).

The vessels conducting 3D surveys are generally 70–90 m (330–295 ft) long. Surveys are typically acquired at a vessel speed of approximately 8.3 km/hour (4.5 knots). Source arrays are activated approximately every 10–15 seconds, depending on vessel speed. The timing between outgoing sound signals can vary for different surveys to achieve the desired "shot point" spacing to meet the geological objectives of the survey; typical spacing is 25–37.5 m (27–41 yards) wide. The receiving arrays could include multiple (4–16) streamer-receiver cables towed behind the source array. Streamer cables contain numerous hydrophone elements at fixed distances within each cable. Each streamer can be 3–8 km (2–5 mi) long with an overall array width of up to 1,500 m (1,640 yards) between outermost streamer cables. Biodegradable liquid paraffin is used to fill the streamer and provide buoyancy. Solid/gel streamer cables also are used. The wide extent of this towed equipment limits both the turning speed and the area a vessel covers with a single pass over a geologic target. It is, therefore, common practice to acquire data using an offset racetrack pattern. Adjacent transit lines for a survey generally are spaced several hundred meters apart and are parallel to each other across the survey area. Seismic surveys are conducted day and night when ocean conditions are favorable, and one survey effort may continue for weeks or months, depending on the size of the survey. Data-acquisition is affected by the arrays towed by the survey vessel and weather conditions. Typically, data are only collected

between 25 and 30 percent of the time (or 6–8 hours a day) because of equipment or weather problems. In addition to downtime due to weather, sea conditions, turning between lines, and equipment maintenance, surveys could be suspended to avoid interactions with biological resources. The MMS estimates that individual surveys could last between 20–30 days (with downtime) to cover a 322 km<sup>2</sup> (200 mi<sup>2</sup>) area.

Marine-streamer 2D surveys use similar geophysical-survey techniques as 3D surveys, but both the mode of operation and general vessel type used are different. The 2D surveys provide a less-detailed subsurface image because the survey lines are spaced farther apart, but they cover wider areas to image geologic structure on more of a regional basis. Large prospects are easily identified on 2D seismic data, but detailed images of the prospective areas within a large prospect can only be seen using 3D data. The 2D seismic-survey vessels generally are smaller than 3D-survey vessels, although larger 3D-survey vessels are also capable of conducting 2D surveys. The 2D source array typically consists of three or more sub-arrays of six to eight air gun sources each. The sound-source level (zero-to-peak) associated with 2D marine seismic surveys are the same as 3D marine seismic surveys (233–240 dB re 1  $\mu$ Pa at 1 m). Typically, a single hydrophone streamer cable approximately 8–12 km long is towed behind the survey vessel. The 2D surveys acquire data along single track lines that are spread more widely apart (usually several miles) than are track lines for 3D surveys (usually several hundred meters).

Both 3D and 2D marine-streamer surveys require a largely ice-free environment to allow effective operation and maneuvering of the air gun arrays and long streamers. In the Chukchi Sea Region, the timing and areas of the surveys will be dictated by ice conditions. The data-acquisition season in the Chukchi Sea could start sometime in July and end sometime in early November. Even during the short summer season, there are periodic incursions of sea ice, so there is no guarantee that any given location will be ice free throughout the survey.

Approximately 160,934 km (100,000 line-miles) of 2D seismic surveys already have been collected in the Chukchi Sea program area, so the MMS assumes that additional geophysical surveys will be primarily 3D surveys focusing on specific leasing targets surrounding OCS Lease Sale 193. The 3D surveys are likely to continue during the early phase of exploration when

wells are drilled; however, the number of surveys is expected to decrease over time as data is collected over the prime prospects and these prospects are tested by drilling.

Based upon information provided by the petitioners, and estimates prepared by the MMS in the Chukchi Sea EIS, the Service estimates that, in any given year during the specified timeframe (2007–2012), up to four seismic survey vessels could be operating simultaneously in the Chukchi Sea Region during the open water season. During the 2006 open water season, three seismic surveys were conducted, while only one seismic survey was conducted during the 2007 open-water season. Each seismic vessel is expected to collect between 3,200–14,500 km (2,000–9,000 linear miles) of seismic survey data. Seismic surveys are expected to occur in open water conditions between July 1 and November 30 each year. We estimate that each seismic survey vessel will be accompanied or serviced by one to three support vessels. Helicopters may also be used, when available, for vessel support and crew changes.

#### *High-Resolution Site-Clearance Surveys*

Based on mapping of the subsurface structures using 2D and 3D seismic data, several well locations may be proposed. Prior to drilling deep test wells, high-resolution site clearance seismic surveys and geotechnical studies will be necessary to examine the proposed exploration drilling locations for geologic hazards, archeological features, and biological populations. Site clearance and studies required for exploration will be conducted during the open water season before a drill rig is mobilized to the site. A typical operation consists of a vessel towing an acoustic source (air gun) about 25 m behind the ship and a 600-m streamer cable with a tail buoy. The source array usually is a single array composed of one or more air guns. A 2D high-resolution site-clearance survey usually has a single air gun, while a 3D high-resolution site survey usually tows an array of air guns. The ships travel at 5.6–6.5 km/hour (3–3.5 knots), and the source is activated every 7–8 seconds (or about every 12.5 m). All vessel operations are designed to be ultra-quiet, as the higher frequencies used in high-resolution work are easily masked by the vessel noise. Typical surveys cover one OCS block at a time. MMS regulations require information be gathered on a 300-by 900-m grid, which amounts to about 129 line kilometers of data per lease block. If there is a high probability of archeological resources,

the north-south lines are 50 m apart and the 900 m remains the same.

Including line turns, the time to survey a lease block is approximately 36 hours. Air gun volumes for high-resolution surveys typically are 90–150 in<sup>3</sup>, and the output of a 90-in<sup>3</sup> air gun ranges from 229–233 dB high-resolution re 1  $\mu$ Pa at 1m. Air gun pressures typically are 2,000 psi (pounds per square inch), although they can be used at 3,000 psi for higher signal strength to collect data from deep in the subsurface.

Based upon information provided by the petitioners, and estimates prepared by the MMS in the Chukchi Sea EIS, we estimate that during the specified timeframe (2007–2012), as many as six high-resolution site surveys may be carried out in any given year, with the majority of site surveys occurring in the latter part of the regulatory time period.

#### *Offshore Drilling Operations*

Considering water depth and the remoteness of this area, drilling operations are most likely to employ drill ships with ice-breaker support vessels. Water depths greater than 30 m (100 ft) and possible pack-ice incursions during the open-water season will preclude the use of bottom-founded platforms as exploration drilling rigs. Using drill ships allows the operator to temporarily move off the drill site if sea or ice conditions require it. Drilling operations are expected to range between 30 and 90 days at different well sites, depending on the depth to the target formation, difficulties during drilling, and logging/testing operations. Drill ships will operate only during the open-water season, where drifting ice can prevent their operation.

A drill ship is secured over the drill site by deploying anchors on as many as ten to twelve mooring lines. The drill pipe is encased in a riser that compensates for the vertical wave motion. The blowout preventer (BOP) is typically located at the seabed in a hole dug below the ice-scour depth. BOP placement is an important safety feature enabling the drill ship to shut down operations and get underway rapidly without exposing the well. One or more ice management vessels (ice breakers) generally support drill ships to ensure ice does not encroach on operations. A barge and tug typically accompany the vessels to provide a standby safety vessel, oil spill response capabilities, and refueling support. Most supplies (including fuel) necessary to complete drilling activities are stored on the drill ship and support vessels. Helicopter servicing of drill ships can occur as frequently as 1–2 times/day. The abandonment phase is initiated if

exploratory wells are not successful. In a typical situation, wells are permanently plugged (with cement) and wellhead equipment removed. The seafloor site is restored to some practicable, pre-exploration condition. Post-abandonment surveys are conducted to confirm that no debris remains following abandonment or those materials remain at the lease tract. The casings for delineation wells are either cut mechanically or with explosives during the process of well abandonment. The MMS estimates that exploration wells will average 2,438 m (8,000 ft), will use approximately 475 tons of dry mud, and produce 600 tons of dry rock cuttings. Considering the cost of synthetic drilling fluids now commonly used, the MMS assumes that most of the drilling mud will be reconditioned and reused. All of the rock cuttings will be discharged at the exploration site.

Considering the relatively short open-water season in the Chukchi Sea (July–November), the MMS estimates that up to four wells could be started by one rig each drilling season. However, it is more likely that only one to two wells could be drilled, tested, and abandoned by one drill ship in any given season, leaving work on the other wells to the next summer season. A total of five exploration wells have been drilled on the Chukchi shelf, and the MMS estimates that 7 to 14 additional wells will be needed to discover and delineate a commercial field.

Based upon information provided by the petitioners, and estimates prepared by the MMS in the Chukchi Sea EIS, we estimate that as many as three drill ships could be operating in the Chukchi Sea Region in any given year during the specified timeframe (2007–2012), with the majority of exploratory drilling occurring in the latter part of the regulatory time period. Each drill ship could drill up to four exploratory or delineation wells per season. Each drill ship is likely to be supported by one to two ice breakers, a barge and tug, one to two helicopter flights per day, and one to two supply ships per week. The operating season is expected to be limited to the open-water season July 1 to November 30.

#### *Onshore Seismic Exploration and Drilling*

CPAI's petition also describes conducting onshore seismic exploration and drilling over the next five years, including geotechnical site investigations, vibroseis, construction of ice pads, roads, and islands, and exploratory drilling. One of these activities is the Intrepid prospect,

approximately 32 km (20 mi) south of Barrow.

Geotechnical site investigations include shallow cores and soil borings to investigate soil conditions and stratigraphy. Geotechnical properties at select points may be integrated with seismic data to develop a regional model for predicting soil conditions in areas of interest.

Vibroseis seismic operations are conducted both onshore and on nearshore ice using large trucks with vibrators that systematically put variable frequency energy into the earth. A minimum of 1.2 m (4 ft) of sea ice is required to support heavy vehicles used to transport equipment offshore for exploration activities. These ice conditions generally exist from January 1 until May 31. The exploration techniques are most commonly used on landfast ice, but they can be used in areas of stable offshore pack-ice. Multiple vehicles are normally associated with a typical vibroseis operation. One or two vehicles with survey crews move ahead of the operation and mark the source receiver points. Occasionally, bulldozers are needed to build snow ramps on the steep terrain or to smooth offshore rough ice within the site.

A typical wintertime exploration seismic crew consists of 40–140 personnel. Roughly 75 percent of the personnel routinely work on the active seismic crew, with approximately 50 percent of those working in vehicles and the remainder outside laying and retrieving geophones and cables.

With the vibroseis technique, activity on the surveyed seismic line begins with the placement of sensors. All sensors are connected to the recording vehicle by multi-pair cable sections. The vibrators move to the beginning of the line, and recording begins. The vibrators move along a source line, which is at some angle to the sensor line. The vibrators begin vibrating in synchrony via a simultaneous radio signal to all vehicles. In a typical survey, each vibrator will vibrate four times at each location. The entire formation of vibrators subsequently moves forward to the next energy input point (67 m (220 ft) in most applications) and repeats the process. In a typical 16-to 18-hour day, a survey will complete 6 to 16 linear km (4–10 mi) in a 2D seismic operation and 24 to 64 linear km (15–40 mi) in a 3D seismic operation. CPAI anticipates conducting between one and five vibroseis seismic programs onshore within the northwest NPR–A over the next 5 years.

CPAI also anticipates developing vertical seismic profiles (VSPs) to calibrate seismic and well data.

Typically, VSP operations are staffed by less than eight people. Four or five of the operators remain in the vehicles (vibrators) within 1.6 to 3.2 km (1 to 2 mi) of the rig, while the others are located at the rig.

On Federal lands, CPAI estimates drilling three to six onshore wells within the next five years. Drilling will likely include both well testing and VSPs. Three onshore wells are proposed for the 2007/2008 season. Drilling operations will require an estimated 32–161 km (20–100 mi) of ice roads, 32–483 km (20–300 mi) of rolligon trails, one to four airfields approximately 1,500 m (5,000 ft) in length on lakes or tundra, rig storage on gravel, possibly at new sites in the Northwest NPR–A, one to five camps, and one to three rigs operating in a given year.

#### **Existing Mitigation Measures for Oil and Gas Exploration Activities**

Measures to mitigate potential effects of oil and gas exploration activities on marine mammal resources and subsistence use of those resources have been identified and developed through previous MMS lease sale National Environmental Policy Act (NEPA) review and analysis processes. The Chukchi Sea Final EIS (CS FEIS) ([http://www.mms.gov/alaska/ref/EIS%20EA/Chukchi\\_feis\\_Sale193/feis\\_193.htm](http://www.mms.gov/alaska/ref/EIS%20EA/Chukchi_feis_Sale193/feis_193.htm)) (OCS EIS/EA MMS 2007–026) identifies several existing measures designed to mitigate potential effects of oil and gas exploration activities on marine mammal resources and subsistence use of those resources (CS FEIS, Sections II.B.3; II–B.5–24). All plans for OCS exploration activities will go through an MMS review and approval to ensure compliance with established laws and regulations. Operational compliance is enforced through the MMS on-site inspection program. The following MMS lease sale stipulations and mitigation measures will be applied to all exploration activities in the Chukchi Lease Sale Planning Area and the geographic region of the incidental take regulations. The Service has incorporated these MMS Lease sale mitigation measures into their analysis of impacts to Pacific walrus and polar bears in the Chukchi Sea.

MMS lease sale stipulations that will help minimize Industry impacts to Pacific walrus and polar bears include:

#### *Oil Spill Prevention and Response*

In compliance with 30 CFR 254, Oil-Spill-Prevention and Response Plans and contingency actions must be prepared by lessees to address the



prevention, detection, and cleanup of fuel and oil spills associated with exploration operations.

#### *Site-Specific Monitoring Program for Marine Mammal Subsistence Resources*

A lessee proposing to conduct exploration operations within traditional subsistence use areas will be required to conduct a site-specific monitoring program designed to assess when walruses and polar bears are present in the vicinity of lease operations and the extent of behavioral effects on these marine mammals due to their operations. This stipulation applies specifically to the communities of Barrow, Wainwright, Point Lay, and Point Hope.

Site-specific monitoring programs will provide information about the seasonal distributions of walruses and polar bears. The information can be used to improve evaluations of the threat of harm to the species and provides immediate information about their activities, and their response to specific events. This stipulation is expected to reduce the potential effects of exploration activities on walruses, polar bears, and the subsistence use of these resources. This stipulation also contributes incremental and important information to ongoing walrus and polar bear research and monitoring efforts.

#### *Conflict Avoidance Mechanisms To Protect Subsistence-Harvesting Activities*

Through consultation with potentially affected communities, the lessee shall make every reasonable effort to assure that their proposed activities are compatible with marine mammal subsistence hunting activities and will not result in unreasonable interference with subsistence harvests. In the event that no agreement is reached between the parties, the lessee, the appropriate management agencies and co-management organizations, and any communities that could be directly affected by the proposed activity may request that the MMS assemble a group consisting of representatives from the parties specifically to address the conflict and attempt to resolve the issues before the MMS makes a final determination on the adequacy of the measures taken to prevent unreasonable conflicts with subsistence harvests.

This lease stipulation will help reduce potential conflicts between subsistence hunters and proposed oil and gas exploration activities. This stipulation will help reduce noise and disturbance conflicts from oil and gas operations during specific periods, such as peak hunting seasons. It requires that

the lessee meet with local communities and subsistence groups to resolve potential conflicts. The consultations required by this stipulation ensure that the lessee, including contractors, consult and coordinate both the timing and sighting of events with subsistence users. This stipulation has proven to be effective in the Beaufort Sea Planning Area in mitigating offshore exploration activities through the development of annual agreements between the Alaska Eskimo Whaling Commission and participating oil companies.

#### *Measures To Mitigate Seismic-Surveying Effects*

The measures summarized below are based on the protective measures in MMS' most recent marine seismic survey exploration permits and the recently completed *Programmatic Environmental Assessment of Arctic Ocean OCS Seismic Surveys—2006* ([http://www.mms.gov/alaska/ref/pea\\_be.htm](http://www.mms.gov/alaska/ref/pea_be.htm)). As stated in the MMS Programmatic Environmental Assessment, these protective measures will be incorporated in all MMS-permitted seismic activities.

1. Spacing of Seismic Surveys—Operators must maintain a minimum spacing of 15 miles between the seismic-source vessels for separate simultaneous operations.

2. Exclusion Zone—A 180/190-decibel (dB) isopleth-exclusion zone (also called a safety zone) from the seismic-survey-sound source shall be free of marine mammals, including walruses and polar bears, before the survey can begin and must remain free of mammals during the survey. The purpose of the exclusion zone is to protect marine mammals from Level A harassment injury. The 180-dB (Level A harassment injury) applies to cetaceans and walruses, and the 190-dB (Level A harassment-injury) applies to pinnipeds other than walruses and polar bears.

3. Monitoring of the Exclusion Zone—Trained marine mammal observers (MMOs) shall monitor the area around the survey for the presence of marine mammals to maintain a marine mammal-free exclusion zone and monitor for avoidance or take behaviors. Visual observers monitor the exclusion zone to ensure that marine mammals do not enter the exclusion zone for at least 30 minutes prior to ramp up, during the conduct of the survey, or before resuming seismic survey work after a shut down.

Shut Down—The survey shall be suspended until the exclusion/safety zone is free of marine mammals. All observers shall have the authority to, and shall instruct the vessel operators

to, immediately stop or de-energize the airgun array whenever a marine mammal is seen within the zone. If the airgun array is completely shut down for any reason during nighttime or poor sighting conditions, it shall not be re-energized until daylight or whenever sighting conditions allow for the zone to be effectively monitored from the source vessel and/or through other passive acoustic, aerial, or vessel-based monitoring.

Ramp Up—Ramp up is the gradual introduction of sound from airguns to deter marine mammals from potentially damaging sound intensities and from approaching the specified zone. This technique involves the gradual increase (usually 5–6 dB per 5-minute increment) in emitted sound levels, beginning with firing a single airgun and gradually adding airguns over a period of at least 20–40 minutes, until the desired operating level of the full array is obtained. Ramp-up procedures may begin after observers ensure the absence of marine mammals for at least 30 minutes. Ramp-up procedures shall not be initiated at night or when monitoring the zone is not possible. A single airgun operating at a minimum source level can be maintained for routine activities, such as making a turn between line transects, for maintenance needs or during periods of impaired visibility (e.g., darkness, fog, high sea states), and does not require a 30-minute clearance of the zone before the airgun array is again ramped up to full output.

Field Verification—Before conducting the survey, the operator shall verify the radii of the exclusion/safety zones within real-time conditions in the field. This provides for more accurate radii rather than relying on modeling techniques before entering the field. Field-verification techniques must use valid techniques for determining propagation loss. When moving a seismic-survey operation into a new area, the operator shall verify the new radii of the zones by applying a sound-propagation series.

4. Monitoring of the Seismic-Survey Area—Aerial-monitoring surveys or an equivalent monitoring program acceptable to the Service will be required through the LOA authorization process. Field verification of the effectiveness of any monitoring techniques may be required by the Service.

5. Reporting Requirements—Reporting requirements provide regulatory agencies with specific information on the monitoring techniques to be implemented and how any observed impacts to marine mammals will be recorded. In addition,

operators must immediately report to Federal regulators any shut downs due to a marine mammal entering the exclusion zones and provide the regulating agencies with information on the frequency of occurrence and the types and behaviors of marine mammals (if possible to ascertain) entering the exclusion zones.

6. Temporal/Spatial/Operational Restrictions—Seismic-survey and associated support vessels shall observe an 805-m (0.5-mi) safety radius around walrus hauled-out onto land or ice. Aircraft shall be required to maintain a 305-m (1,000-ft) minimum altitude within 805 m (0.5 mi) of hauled-out walrus.

7. Seismic-survey operators shall notify MMS immediately in the event of any loss of cable, streamer, or other equipment that could pose a danger to marine mammals.

These seismic mitigation measures will help reduce the potential for Level A Harassment of walrus and polar bears during seismic operations. The spatial separation of seismic operations will also reduce potential cumulative effects of simultaneous operations. The monitoring and reporting requirements will provide location-specific information about the seasonal distributions of walrus and polar bears. The additional information can be used to evaluate the future threat of harm to the species and also provides immediate information about their activities, and their response to specific events.

## Biological Information

### *Pacific Walrus*

#### 1. Stock Definition and Range

Pacific walrus are represented by a single stock of animals that inhabit the shallow continental shelf waters of the Bering and Chukchi seas. The population ranges across the international boundaries of the United States and Russia, and both nations share common interests with respect to the conservation and management of this species.

The distribution of Pacific walrus varies markedly with the seasons. During the late winter breeding season, walrus are found in areas of the Bering Sea where open leads, polynyas, or areas of broken pack-ice occur. Significant winter concentrations are normally found in the Gulf of Anadyr, the St. Lawrence Island Polynya, and in an area south of Nunivak Island. In the spring and early summer, most of the population follows the retreating pack-ice northward into the Chukchi Sea; however, several thousand animals,

primarily adult males, remain in the Bering Sea, utilizing coastal haul-outs, during the ice-free season. During the summer months, walrus are widely distributed across the shallow continental shelf waters of the Chukchi Sea. Significant summer concentrations are normally found in the unconsolidated pack-ice west of Point Barrow, and along the northern coastline of Chukotka, Russia, near Wrangel Island. As the ice edge advances southward in the fall, walrus reverse their migration and regroup on the Bering Sea pack-ice.

Between 1975 and 1990, aerial surveys were carried out by the United States and Russia at five year intervals, producing population estimates of: 221,350 (1975); 246,360 (1980); 234,020 (1985); and 201,039 (1990). The estimates generated from these surveys are considered conservative abundance estimates and are not useful for detecting trends because walrus are found in large groups that are distributed in a non-uniform fashion. Efforts to survey the Pacific walrus population were suspended after 1990 due to unresolved problems with survey methods to address the patchy distribution of walrus and that resulted in population estimates with unacceptably large confidence intervals. In the spring of 2006, a joint U.S./Russia aerial survey to estimate the walrus population was carried out in the pack ice of the Bering Sea. This information is currently being analyzed and a current population estimate is expected in the near future.

Estimating the abundance or population size of Pacific walrus has been an inherently problematic task. Previous efforts conducted in the autumn (1975, 1980, 1985, and 1990) resulted in widely varying estimates with high variance and low confidence limits. Accounting for animals using traditional haul-outs is factored into the abundance estimates. The 1975, 1980, and 1985 walrus surveys predominately found animals over sea ice habitat. In contrast, the 1990 survey included a large number of walrus located on land haul-outs, predominantly in Russia, during a season of extreme ice recession.

A 1975 evaluation of aerial survey methods conducted in the U.S. sector over the eastern half of the Chukchi Sea (5 days of effort covering 7,743 km and 30.2 flight hours) found walrus were unevenly distributed, patchy, and encountered more frequently in ice habitat where at least 75 percent of the surface was covered by ice. Estimates of abundance, based on single day density estimates, ranged from 818 to 1,760

walrus in the open-water area, and 2,475 to 100,568 walrus in pack ice sampled areas.

In 1980, a coordinated U.S. and Russian aerial survey found walrus located throughout the area surveyed and the U.S. distribution showed extreme clustering of walrus on pack ice in an area of high density between longitude 166° W and 171° W. Initially the estimates were 140,000 animals in the U.S. and 130,000 to 150,000 animals in Russia, with a final total estimate of 246,360 animals.

In 1985, the third joint walrus survey found few walrus in the U.S. sector east of 161° or west of 170°. On days when more walrus were in the water, they were found farther into the pack ice, and on days when nearly all walrus were hauled out on the ice, they were close to the southern edge of the ice. The estimate of abundance for the U.S. portion of the survey was 63,487 animals with an additional 15,238 animals, mainly males, estimated in Bristol Bay, far to the south. The Russians estimated either 54,080 or 115,531 walrus in the pack ice of their sector, depending on the inclusion or exclusion of a large aggregation of walrus encountered on survey transects from the abundance estimate. This illustrates the symptomatic nature of clustered or patchy distributions of walrus noted earlier and the consequence on abundance estimates. In addition, the Russians counted 39,572 animals on their Bering Sea land haul-outs. The combined U.S. and Russia estimate was 234,020 animals.

In 1990, a fourth joint survey was designed to employ a common survey design. Unlike other surveys, the study area was unexpectedly characterized by an extreme amount of open water caused by an unusual recession of pack ice. As a result, the survey covered land haul-outs in the U.S. and Russia as well as open water and pack ice. The total combined population estimate was 201,039. Of this total, the U.S. sector was comprised of 7,522 walrus in Bristol Bay haul-outs and only 16,489 estimated in the Chukchi Sea area. This estimate differs dramatically from previous pack ice estimates in the U.S. Chukchi Sea region, where walrus were relatively abundant in previous surveys. The vast majority of walrus were located in the Russian sector (154,225 walrus) and occupied land haul-outs, including 112,848 animals on Wrangel Island. Land haul-outs in Kamchatka, Southern Chukotka, the Gulf of Anadyr, and the north shore of Chukotka accounted for the remaining 41,377 animals. The Russian pack ice

was remarkably sparse with an estimate of only 16,484 animals.

## 2. Habitat

Walrus are an ice dependent species. They rely on floating pack-ice as a substrate for resting and giving birth. Walrus generally require ice thicknesses of 50 centimeters (cm) or more to support their weight. Although walrus can break through ice up to 20 cm thick, they usually occupy areas with natural openings and are not found in areas of extensive, unbroken ice. Thus, their concentrations in winter tend to be in areas of divergent ice flow or along the margins of persistent polynyas. Concentrations in summer tend to be in areas of unconsolidated pack-ice, usually within 100 km of the leading edge of the ice pack. When suitable pack-ice is not available, walrus haul out to rest on land. Isolated sites, such as barrier islands, points, and headlands, are most frequently occupied. Social factors, learned behavior, and proximity to their prey base are also thought to influence the location of haul-out sites. Traditional walrus haul-out sites in the eastern Chukchi Sea include Cape Thompson, Cape Lisburne, and Icy Cape. In recent years, the Cape Lisburne haul-out site has seen regular use in late summer. Numerous haul-outs also exist along the northern coastline of Chukotka, and on Wrangel and Herald islands, which are considered important haul-out areas in late summer, especially in years when the pack-ice retreats beyond the continental shelf. Notably, during the 1990 population survey, when the Chukchi Sea was largely ice-free, large haul-outs of walrus (over 100,000 animals) formed on Wrangel Island. In contrast, walrus observed during the 1970 through 1985 aerial surveys were seen primarily on sea ice over the continental shelf between Wrangel Island and Alaska.

Although capable of diving to deeper depths, walrus are for the most part found in shallow waters of 100 m or less, possibly because of higher productivity of their benthic foods in shallower water. They feed almost exclusively on benthic invertebrates although Native hunters have also reported incidences of walrus preying on seals. Prey densities are thought to vary across the continental shelf according to sediment type and structure. Preferred feeding areas are typically composed of sediments of soft, fine sands. The juxtaposition of ice over appropriate depths for feeding is especially important for females with dependent calves that are not capable of deep diving or long exposure in the

water. The mobility of the pack-ice is thought to help prevent walrus from overexploiting their prey resource.

Although walrus may range some distance from land or ice haul-outs, for example during migrations or foraging excursions, the species is not adapted to a pelagic existence. Foraging trips can sometimes last up to several days, during which time they dive to the bottom nearly continuously. Most foraging dives to the bottom last between 5 and 10 minutes, with a relatively short (1–2 minute) surface interval.

## 3. Life History

Walrus are long-lived animals with low rates of reproduction. Females reach sexual maturity at 4 to 9 years of age. Males become fertile at 5 to 7 years of age; however, they are usually unable to compete for mates until they reach full physical maturity at 15–16 years of age. Breeding occurs between January and March in the pack-ice of the Bering Sea. Calves are usually born in late April or May the following year during the northward migration from the Bering Sea to the Chukchi Sea. Calving areas in the Chukchi Sea extend from the Bering Strait to latitude 70 °N. Calves are capable of entering the water shortly after birth, but tend to haul-out frequently, until their swimming ability and blubber layer are well developed. Newborn calves are tended closely. They accompany their mother from birth and are usually not weaned for 2 years or more. Cows brood neonates to aid in their thermoregulation, and carry them on their back or under their flipper while in the water. Females with newborns often join together to form large “nursery herds”. Summer distribution of females and young walrus is closely tied to the movements of the pack-ice relative to feeding areas. Females give birth to one calf every 2 or more years. This reproductive rate is much lower than other pinniped species; however, some walrus live to age 35–40, and remain reproductively active until relatively late in life.

Walrus are extremely social and gregarious animals. They tend to travel in groups and haul-out onto ice or land in groups. Walrus spend approximately one-third of their time hauled out onto land or ice. Hauled-out walrus tend to lie in close physical contact with each other. Youngsters often lie on top of the adults. The size of the hauled-out groups can range from a few animals up to several thousand individuals.

## 4. Mortality

Polar bears are known to prey on walrus calves, and killer whales (*Orcinus orca*) have been known to take all age classes of animals. Predation levels are thought to be highest near terrestrial haul-out sites where large aggregations of walrus can be found; however, few observations of killer whales preying on walrus exist.

Pacific walrus have been hunted by coastal Natives in Alaska and Chukotka for thousands of years. Exploitation of the Pacific walrus population by Europeans has also occurred in varying degrees since first contact. Presently, walrus hunting in Alaska and Chukotka is restricted to meet the subsistence needs of aboriginal peoples. Over the past decade, the combined harvest of the United States and Russia has averaged approximately 5,500 walrus per year. This mortality estimate includes corrections for under-reported harvest and struck and lost animals.

Intraspecific trauma is also a known source of injury and mortality. Disturbance events can cause walrus to stampede into the water and have been known to result in injuries and mortalities. The risk of stampede-related injuries increases with the number of animals hauled out. Calves and young animals at the perimeter of these herds are particularly vulnerable to trampling injuries.

## 5. Distributions and Abundance of Pacific Walrus in the Chukchi Sea

Walrus are seasonably abundant in the Chukchi Sea. Their distribution in the region is influenced primarily by the distribution and extent of seasonal pack-ice. In May and June walrus migrate into the region along lead systems that form along the coastlines of Alaska and Chukotka. During the summer months walrus are widely distributed along the southern margin of the seasonal pack-ice both in U.S. and Russian waters. During August, the edge of the pack-ice generally retreats northward to about 71 °N, but in light ice years, the ice edge can retreat beyond 76 °N. The sea ice normally reaches its minimum (northern) extent in September. In recent years, several tens of thousands of walrus have been reported congregating at coastal haul-outs along the Russian coast in late summer. Russian biologists attribute the formation of these coastal aggregations to diminishing sea ice habitats in offshore regions. In 2007, a new sea ice minima record was established. Sea ice had completely retreated from the continental shelf waters of the Chukchi Sea by mid-August, 2007 and anecdotal

reports from Russia indicate that as many as 100,000 walruses, comprised of mixed herds of females and calves, congregated at coastal haul-outs along the northern Chukotka coastline. An estimated 2,000 to 5,000 walruses were also observed along the Alaskan Chukchi Sea coast in 2007 using nontraditional haul-outs. This is a relatively small portion of the annual, hauled-out animals in the population. Historically, approximately 5,000 animals have annually used the Bristol Bay haul-outs, such as Round Island and Cape Seniavin. The pack-ice usually advances rapidly southward in October, and most walruses move into the Bering Sea by mid-to-late November.

Walrus are closely associated with sea ice. The dynamic nature of sea ice habitats is expected to result in considerable seasonal and annual variation in the number of animals likely to be present in the proposed exploration arena. While a recent abundance estimate for the number of walruses likely to be present in the offshore waters of the eastern Chukchi Sea during the proposed exploration season is not available, an aerial survey was carried out in the fall of 1990 during a season of minimum ice conditions where sea ice retracted north beyond the continental shelf, similar to recent conditions throughout the Chukchi Sea. This survey observed 16,489 walruses distributed along the Chukchi Sea pack-ice between Wrangel Island and Point Barrow, where a much larger portion of the population was distributed in Russia on land and sea ice haul-outs. The sea ice was distributed well beyond the continental shelf at the time of the survey and most walruses were using coastal haul-outs in Russia, which is similar to the pattern of distribution observed in 2007.

#### *Polar Bears*

##### 1. Alaska Stock Definition and Range

Polar bears occur throughout the Arctic. The world population estimate of polar bears ranges from 20,000–25,000 individuals. In Alaska, they have been observed as far south in the eastern Bering Sea as St. Matthew Island and the Pribilof Islands. However, they are most commonly found within 180 miles of the Alaskan coast of the Chukchi and Beaufort seas, from the Bering Strait to the U.S./Canada border. Two stocks occur in Alaska: (1) The Chukchi-Bering seas stock (CS); and (2) the Southern Beaufort Sea stock (SBS). A summary of the Chukchi and Southern Beaufort Sea polar bear stocks is described below. A detailed description of the Chukchi Sea and Southern Beaufort Sea polar bear

stocks can be found in the “Range-Wide Status Review of the Polar Bear (*Ursus maritimus*)” (<http://alaska.fws.gov/fisheries/mmm/polarbear/issues.htm>).

##### A. Chukchi/Bering Seas Stock (CS)

The CS is defined as those polar bears inhabiting the area as far west as the eastern portion of the Eastern Siberian Sea, as far east as Point Barrow, and extending into the Bering Sea, with its southern boundary determined by the extent of annual ice. Based upon telemetry studies, the western boundary of the population has been set near Chaunskaya Bay in northeastern Russia. The eastern boundary is at Icy Cape, Alaska, which was, until recently, also considered to be the western boundary of the SBS. This eastern boundary constitutes a large overlap zone with bears in the SBS population. The CS population appeared to increase after the level of harvest was reduced in 1972. However, harvest records suggest that the population now may be declining. Illegal polar bear hunting in Russia is thought to be one reason for this decline. The most recent population estimate for the CS population is 2,000 animals. This was based on extrapolation of aerial den surveys from the early 1990s; however, this estimate is currently considered to be of little value for management. Reliable estimates of population size based upon mark and recapture are not available for this region and measuring the population size remains a research challenge due to the movements of the polar bear and the dynamic Arctic habitat.

Legal harvesting activities for the CS stock are currently restricted to Native Alaskans in western Alaska, as long as this does not affect the sustainability of the polar bear population. In Alaska, average annual harvest levels declined by approximately 50 percent between the 1980s and the 1990s and have remained at low levels in recent years. We believe there are several factors affecting the harvest level of CS bears in western Alaska. Substantial illegal harvest in Chukotka is the most relevant factor affecting the CS population level. In recent years a reportedly sizable illegal harvest has occurred in Russia, despite a ban on hunting that has been in place since 1956. In addition, other factors such as climatic change and its effects on pack-ice distribution, as well as changing demographics and hunting effort in Native communities could influence the population and the declining take. The unknown rate of illegal take makes a stable designation for the CS population uncertain and tentative.

Until recently, the United States and Russia have managed the shared CS polar bear population independently. Now, Alaska and Russian bear researchers and managers are working to update and enhance the collective knowledge of polar bears in the CS stock to improve management goals and objectives. On September 21, 2007, the United States ratified the U.S./Russia Bilateral Polar Bear Conservation Agreement (Bilateral Agreement) for the shared polar bear population, which had been signed by both countries on October 16, 2000; implementing legislation for the agreement occurred in January 2007. The purpose of the Bilateral Agreement is to assure long-term, science-based conservation of the polar bear population and includes binding harvest limits. Implementation of the Bilateral Agreement will unify management regimes and provide for harvest limits. The treaty calls for the active involvement of Native people and their organizations in future management programs. It will also enhance such long-term joint efforts as conservation of ecosystems and important habitats, harvest allocations based on sustainability, collection of biological information, and increased consultation and cooperation with state, local, and private interests.

In association with the ratification of the agreement, the Service sponsored a meeting from August 7 through 9, 2007, of technical specialists from the United States and Russia to discuss future management, research, and conservation needs for the CS polar bear population. The goals of the meeting were to exchange information about current and future research activities and priorities, provide technical input concerning research and management needs for the implementation of the Bilateral Agreement with specific regard to field research and conservation practices, and to initiate planning for managing the subsistence harvest in Alaska and Russia under the newly activated treaty. The primary challenge discussed by the group is the lack of population information (status and trends) to support determination of a sustainable harvest as called for by the Bilateral Agreement. Information from this meeting will be shared at the first meeting of the Joint Commissioners.

##### B. Southern Beaufort Sea (SBS)

The SBS polar bear population is shared between Canada and Alaska. Radio-telemetry data, combined with earlier tag returns from harvested bears, suggested that the SBS region comprised a single population with a western boundary near Icy Cape, Alaska, and an

eastern boundary near Pearce Point, Northwest Territories, Canada. Early estimates from the mid 1980s suggested the size of the SBS population was approximately 1,800 polar bears, although uneven sampling was known to compromise the accuracy of that estimate. A population analysis of the SBS stock was completed in June 2006 through joint research coordinated between the United States and Canada. That analysis indicated the population within the region between Icy Cape and Pearce Point is now approximately 1,500 polar bears (95 percent confidence intervals approximately 1,000–2,000). Although the confidence intervals of the current population estimate overlap the previous population estimate of 1,800; other statistical and ecological evidence (e.g., high recapture rates encountered in the field) suggest that the current population is actually smaller than has been estimated for this area in the past.

Recent analyses of radio-telemetry data of spatio-temporal use patterns of bears of the SBS stock using new spatial modelling techniques suggest realignment of the boundaries of the Southern Beaufort Sea area. We now know that nearly all bears in the central coastal region of the Beaufort Sea are from the SBS population, and that proportional representation of SBS bears decreases to both the west and east. For example, only 50 percent of the bears occurring in Barrow, Alaska, and Tuktoyaktuk, Northwest Territories, are SBS bears, with the remainder being from the CS and Northern Beaufort Sea populations, respectively. The recent radio-telemetry data indicate that bears from the SBS population seldom reach Pearce Point, which is currently on the eastern management boundary for the SBS population.

Only a small proportion of the SBS polar bear population will be found in the Chukchi Sea region during the ice-covered season. This is based on estimates of probabilities of polar bear distribution from each population. The relative probabilities of sighting a bear were developed using satellite radio-telemetry data. This technique has also increased our understanding of the proportions of the populations that could occur in the region where both populations overlap. These probabilities indicate that SBS polar bears will be found at lower proportions in the western portions of their range (Chukchi Sea) than in the central portions of their range (central Beaufort Sea).

Management and conservation concerns for the CS and SBS polar bear populations include: climate change, which continues to increase both the expanse and duration of open water in

summer and fall; human activities within the near-shore environment, including hydrocarbon development and production; atmospheric and oceanic transport of contaminants into the Arctic; and the potential for inadvertent over-harvest, should polar bear stocks become nutritionally stressed or decline due to some combination of the above concerns.

Today, habitat loss, illegal hunting, and, in particular, the diminishing extent, thickness, and seasonal persistence of sea ice pose the most serious threats to polar bears worldwide. As a result of such concerns, the polar bear was listed as threatened under the U.S. Endangered Species Act of 1973, as amended (ESA), on May 15, 2008 (73 FR 28212). More information can be found at: <http://www.fws.gov/>.

## 2. Habitat

Polar bears of the Chukchi Sea are subject to the movements and coverage of the pack-ice and annual ice as they are dependent on the ice as a platform for hunting and surviving. Polar bears are widely distributed within their range and are generally solitary animals, although they will form aggregations around food sources. Historically, polar bears of the Chukchi Sea have spent most of their time on the annual ice in near-shore, shallow waters over the productive continental shelf, which is associated with the shear zone and the active ice adjacent to the shear zone. Sea ice and food availability are two important factors affecting the distribution of polar bears. During the ice-covered season, bears use the extent of the annual ice. The most extensive north-south movements of polar bears are associated with the spring and fall ice movement. For example, during the 2006 ice-covered season, six bears radio-collared in the Beaufort Sea were located in the Chukchi and Bering Seas as far south as 59° latitude, which was the farthest extent of the annual ice during 2006. A small number of bears sometimes remain on the Russian and Alaskan coasts during the initial stages of ice retreat in the spring.

Polar bear distribution during the open-water season in the Chukchi Sea, where maximum open water occurs in September, is dependent upon the location of the ice edge as well. The summer ice pack can be quite disjointed and segments can be driven great distances by wind carrying polar bears with them. Recent telemetry movement data are lacking for bears in the Chukchi Sea; however, an increased trend by polar bears to use coastal habitats in the fall during open-water and freeze-up

conditions has been noted by researchers since 1992. Recently, during the minimum sea ice extents, which occurred in 2005 and 2007, polar bears exhibited this coastal movement pattern as observations from Russian biologists and satellite telemetry data of bears in the Beaufort Sea indicated that bears were found on the sea ice or along the Chukotka coast during the open-water period.

## 3. Denning and Reproduction

Although insufficient data exist to accurately quantify polar bear denning along the Alaskan Chukchi Sea coast, dens in the area appear to be less concentrated than for other areas in the Arctic. The majority of denning of CS polar bears occurs in Russia on Wrangel Island, Herald Island, and certain locations on the northern Chukotka coast. In addition, due to changes in the formation of sea ice along the Chukotka coast, there are some indications that the Bear Islands (Medvezhiy Ostrova), near the Kolyma River estuary, have become a denning area for the CS stock as well.

Females without dependent cubs breed in the spring. Females can initiate breeding at five to six years of age. Females with cubs do not mate. Pregnant females enter maternity dens by late November, and the young are usually born in late December or early January. Only pregnant females den for an extended period during the winter; other polar bears may excavate temporary dens to escape harsh winter winds. An average of two cubs are born. Reproductive potential (intrinsic rate of increase) is low. The average reproductive interval for a polar bear is three to four years, and a female polar bear can produce about 8 to 10 cubs in her lifetime; in healthy populations, 50 to 60 percent of the cubs will survive. Female bears can be quite sensitive to disturbances during this denning period.

In late March or early April, the female and cubs emerge from the den. If the mother moves young cubs from the den before they can walk or withstand the cold, mortality to the cubs may increase. Therefore, it is thought that successful denning, birthing, and rearing activities require a relatively undisturbed environment. Radio and satellite telemetry studies elsewhere indicate that denning can occur in multi-year pack-ice and on land. Recent studies of the SBS indicate that the proportion of dens on pack-ice have declined from approximately 60 percent in 1985–1994 to 40 percent in 1998–2004.

#### 4. Prey

Ringed seals (*Phoca hispida*) are the primary prey of polar bears in most areas. Bearded seals (*Erignathus barbatus*) and walrus calves are hunted occasionally. Polar bears can opportunistically scavenge marine mammal carcasses. Polar bears will occasionally feed on bowhead whale (*Balaena mysticetus*) carcasses at Point Barrow, Cross, and Barter Islands, areas where bowhead whales are harvested for subsistence purposes. There are also reports of polar bears killing beluga whales (*Delphinapterus leucas*) trapped in the ice. Polar bears are also known to ingest anthropogenic, nonfood items including Styrofoam, plastic, antifreeze, and hydraulic and lubricating fluids.

Polar bears use the sea ice as a platform to hunt seals. Polar bears hunt seals using various means. They can hunt along leads and other areas of open water, by waiting at a breathing hole, or by breaking through the roof of a seal lair. Lairs are excavated in snow drifts on top of the ice. Bears also stalk seals in the spring when they haul out on the ice in warm weather. The relationship between ice type and polar bear distribution is as yet unknown, but it is suspected to be related to seal availability. Due to changing sea ice conditions the area of open water and proportion of marginal ice has increased and extends later in the fall. This may limit seal availability to polar bears as the most productive areas for seals appear to be over the shallower waters of the continental shelf.

#### 5. Mortality

Polar bears are long-lived (up to 30 years) and have no natural predators, and they do not appear to be prone to death by diseases or parasites. Cannibalism by adult males on cubs and occasionally on other bears is known to occur. The most significant source of mortality is man. Before the MMPA was passed in 1972, polar bears were taken by sport hunters and residents. Between 1925 and 1972, the mean reported kill was 186 bears per year. Seventy-five percent of these were males, as cubs and females with cubs were protected. Since 1972, only Alaska Natives from coastal Alaskan villages have been allowed to hunt polar bears in the United States for their subsistence uses or for handicraft and clothing items for sale. The Native hunt occurs without restrictions on sex, age, or number provided that the population is not determined to be depleted. From 1980 to 2005, the total annual harvest for Alaska averaged 101 bears: 64 percent from the Chukchi Sea and 36 percent from the Beaufort Sea.

Other sources of mortality related to human activities include bears killed during research activities, euthanasia of injured bears, and defense of life kills by non-Natives.

#### 6. Distributions and Abundance of Polar Bears in the Chukchi Sea

Polar bears are seasonably abundant in the Chukchi Sea and Lease Sale Area 193 and their distribution is influenced by the movement of the seasonal pack-ice. Polar bears in the Chukchi and Bering Seas move south with the advancing ice during fall and winter and move north in advance of the receding ice in late spring and early summer. The distance between the northern and southern extremes of the seasonal pack-ice is approximately 800 miles. In May and June, polar bears are likely to be encountered in the Lease Sale Area 193 as they move northward from the northern Bering Sea through the Bering Strait into the southern Chukchi Sea. During the fall/early winter period, polar bears are likely to be encountered in the Lease Sale Area 193 during their southward migration in late October and November. Furthermore, bears from the SBS and CS populations can be encountered in the Chukchi Sea as they travel with the pack-ice or ice floes in search of food. Polar bears are dependent upon the sea ice for foraging and the most productive areas to be near the ice edge, leads, or polynyas over the continental shelf where the ocean depth is minimal. In addition, polar bears could be present along the shoreline in this area, as they will opportunistically scavenge on marine mammal carcasses washed up along the shoreline and they may become stranded on land due to the receding pack-ice.

#### Subsistence Use and Harvest Patterns of Pacific Walruses and Polar Bears

Walruses and polar bears have been traditionally harvested by Alaska Natives for subsistence purposes. The harvest of these species plays an important role in the culture and economy of many coastal communities in Alaska and Chukotka. Walrus meat is consumed by humans and dogs, and the ivory is used to manufacture traditional arts and crafts. Polar bears are primarily hunted for their fur, which is used to manufacture cold weather gear; however, their meat is also occasionally consumed. The communities most likely to be impacted by the proposed activities are Point Hope, Point Lay, Wainwright, and Barrow.

An exemption under section 101(b) of the MMPA allows Alaska Natives who reside in Alaska and dwell on the coast

of the North Pacific Ocean or the Arctic Ocean to take walruses and polar bears if such taking is for subsistence purposes, including creating and selling authentic native articles of handicrafts and clothing, as long as the take is not done in a wasteful manner. Under the terms of the MMPA, there are no restrictions on the number, season, or ages of walruses or polar bears that can be harvested in Alaska. A more restrictive Inuvialuit-Inupiat Polar Bear Native-to-Native Agreement (Native Agreement) between the Inupiat in Northern Alaska and the Inuvialuit in the Northwest Territories Canada was created for the SBS bears in 1988. Polar bears harvested from the communities of Barrow and Wainwright are currently considered part of the SBS stock and thus are subject to the terms of the Native Agreement. The Native Agreement establishes quotas and recommendations concerning protection of denning females, family groups, and methods of take. Quotas are based on estimates of population size and age-specific estimates of survival and recruitment. The polar bears harvested by the communities of Point Hope and Point Lay are thought to come primarily from the Chukchi/Bering sea stock. Neither Point Hope nor Point Lay hunters are parties to the Native Agreement.

The Service collects information on the subsistence harvest of walruses and polar bears in Alaska through the Marking, Tagging and Reporting Program (MTRP). The program is administered through a network of MTRP "taggers" employed in subsistence hunting communities. The marking and tagging Rule requires that hunters report harvested walruses and polar bears to MTRP taggers within 30 days of kill. Taggers also certify (tag) specified parts (ivory tusks for walruses, hide and skull for polar bears) to help control illegal take and trade. MTRP reports are thought to generally underestimate the total U.S. subsistence walrus harvest, with one recent estimate as low as 30 percent of actual harvest in Barrow. According to Service records, polar bear harvests reported by the MTRP are believed to be as high as 80 percent of the actual subsistence harvest in the communities most affected by this regulation.

Harvest levels of polar bears and walruses in these communities vary considerably between years, presumably in response to differences in animal distribution and ice conditions. Descriptive information on subsistence harvests of walruses and polar bears in each community is presented below.

### *Point Hope*

Between 1990 and 2006, the average annual walrus harvest recorded through the MTRP at Point Hope was  $3.6 \pm 5.1$  (SD) animals per year. Point Hope hunters typically begin their walrus hunt in late May and June as walruses migrate into the Chukchi Sea. The sea ice is usually well off shore of Point Hope by July and does not bring animals back into the range of hunters until late August and September. Most (70.8 percent) of the reported walrus harvest at Point Hope occurred in the months of June and September. Most of the walruses recorded through the MTRP at Point Hope were taken within five miles of the coast, or near coastal haulout sites at Cape Lisburne.

Between 1990 and 2006, the average reported polar bear harvest at Point Hope was  $13.1 \pm 4.8$  animals per year. Polar bear harvests typically occur from January to April. Most of the polar bears reported through the MTRP program were harvested within 10 miles of the community; however, residents also reported taking polar bears as far away as Cape Thompson and Cape Lisburne.

### *Point Lay*

Point Lay hunters reported an average of  $2.2 \pm 2.0$  walruses per year between 1990 and 2006. Based on MTRP data, walrus hunting in Point Lay peaks in June–July with 84.4 percent of all walruses being harvested during these months. Historically, harvests have occurred primarily within 40 miles north and south along the coast from Point Lay and approximately 30 miles offshore.

Between 1990 and 2006, the average reported polar bear harvest at Point Lay was  $2.3 \pm 1.4$  animals per year. The only information on harvest locations comes from the MTRP database; all reported harvest occurred within 25 miles of Point Lay.

### *Wainwright*

Wainwright hunters have consistently harvested more walruses than any other subsistence community on the North Slope. Between 1990 and 2006, the average reported walrus harvest in Wainwright was  $44.2 \pm 29.2$  animals per year. A discrepancy between MTRP data and past household surveys is noted. Walruses are thought to represent approximately 40 percent of the communities' annual subsistence diet of marine mammals. Wainwright residents hunt walruses from June through August as the ice retreats northward. Walruses can be plentiful in the pack-ice near the village this time of year. Most (85.2 percent) of the harvest occurs

in June and July. Most walrus hunting is thought to occur within 20 miles of the community, in all seaward directions.

Between 1990 and 2006, the average reported polar bear harvest at Wainwright was  $6.8 \pm 3.7$  animals per year. Polar bears are harvested throughout much of the year, with peak harvests reported in May and December. Polar bear are often harvested coincidentally with beluga and bowhead whale harvests. MTRP data indicate that most hunting occurs within 10 miles of the community.

### *Barrow*

Barrow is the northernmost community within the geographical region being considered. Most (88.6 percent) walrus hunting occurs in June and July when the land-fast ice breaks up and hunters can access the walruses by boat as they migrate north on the retreating pack-ice. Walrus hunters from Barrow sometimes range up to 60 miles from shore; however, most harvests reported through the MTRP have occurred within 30 miles of the community. Between 1990 and 2006, the average reported walrus harvest in Barrow was  $24.1 \pm 14.6$  animals per year.

Between 1990 and 2006, the average reported polar bear harvest at Barrow was  $21.3 \pm 8.9$  animals per year. The number of polar bears harvested in Barrow is thought to be influenced by ice conditions and the number of people out on the ice. Most (74 percent) of all polar bear harvests reported by Barrow residents occurred in February and March. Although relatively few people are thought to hunt specifically for polar bears, those that do hunt primarily between October and March. Hunting areas for polar bears overlap strongly with areas of bowhead subsistence hunting; particularly the area from Point Barrow south to Walakpa Lagoon where walrus and whale carcasses are known to attract polar bears.

## **Potential and Observed Impacts of Oil and Gas Industry Activities on Pacific Walruses and Polar Bears**

### *Pacific Walruses*

#### *A. Potential Impacts of Oil and Gas Industry Activities on Pacific Walruses*

##### **1. Disturbance**

Proposed oil and gas exploration activities in the Chukchi Sea Region include the operation of seismic survey vessels, drill ships, icebreakers, supply boats, fixed-winged aircrafts, and helicopters. Operating this equipment near walruses without appropriate

mitigation measures could result in disturbances. Potential effects of disturbances on walruses include insufficient rest, increased stress and energy expenditure, interference with feeding, masking of communication, and impaired thermoregulation of calves that spend an increased amount of time in the water. Prolonged or repeated disturbances could potentially displace individuals or herds from preferred feeding or resting areas. Disturbance events can cause walrus groups to abandon land or ice haul-outs. Severe disturbance events occasionally result in trampling injuries or cow-calf separations, both of which are potentially fatal. Calves and young animals at the perimeter of the herds appear particularly vulnerable to trampling injuries.

The response of walruses to disturbance stimuli is highly variable. Anecdotal observations by walrus hunters and researchers suggest that males tend to be more tolerant of disturbances than females and individuals tend to be more tolerant than groups. Females with dependent calves are considered least tolerant of disturbances. Hearing sensitivity is assumed to be within the 13 Hz and 1,200 Hz range of their own vocalizations. Walrus hunters and researchers have noted that walruses tend to react to the presence of humans and machines at greater distances from upwind approaches than from downwind approaches, suggesting that odor is also a stimulus for a flight response. The visual acuity of walruses is thought to be less than for other species of pinnipeds.

Walruses are poorly adapted to life in the open ocean. They must periodically haul out onto ice or land to rest between feeding bouts. Previous aerial survey efforts in the offshore region of the eastern Chukchi Sea found that most (80–96 percent) walruses were closely associated with sea ice and that the number of walruses observed in open water decreased significantly with distance from the pack ice. Under minimal or no-ice conditions, we expect most walruses will either migrate out of the region in pursuit of more favorable ice habitats, or relocate to coastal haulouts where their foraging trips will be restricted to near-shore habitats. Therefore, in evaluating the potential impacts of exploration activities on Pacific walruses, the presence or absence of pack ice could serve as one indicator of whether or not walruses are likely to be found in the area. Activities occurring in or near sea ice habitats are presumed to have the greatest potential for interacting with walruses. Activities



occurring under open water conditions are expected to interact with relatively small numbers of animals.

Seismic operations are expected to add significant levels of noise into the marine environment. Although the hearing sensitivity of walrus is poorly known, source levels associated with Marine 3D and 2D seismic surveys are thought to be high enough to cause temporary hearing loss in other pinniped species. Therefore, walrus within the 180-decibel (dB re 1  $\mu$ Pa) safety radius described by Industry for seismic activities could potentially suffer shifts in hearing thresholds and temporary hearing loss. Seismic survey vessels will be required to ramp up airguns slowly to allow marine mammals the opportunity to move away from potentially injurious sound sources. Marine mammal monitors will also be required to monitor seismic safety zones and call for the power down or shut down of airgun array if any marine mammals are detected within the prescribed safety zone.

Geotechnical seismic surveys and high-resolution site clearance seismic surveys are expected to occur primarily in open water conditions, at a sufficient distance from the pack-ice and large concentrations of walrus to avoid most disturbances. Although most walrus are expected to be closely associated with sea ice or coastal haulouts during offshore exploration activities, small numbers of animals may be encountered in open water conditions. Walrus swimming in open water will likely be able to detect seismic airgun pulses up to several kilometers from a seismic source vessel. The most likely response of walrus to noise generated by seismic surveys will be to move away from the source of the disturbance. Because of the transitory nature of the proposed seismic surveys, impacts to walrus exposed to seismic survey operations are expected to be temporary in nature and have little or no effects on survival or recruitment.

Although concentrations of walrus in open water environments are expected to be low, groups of foraging or migrating animals transiting through the area may be encountered. Adaptive mitigation measures based upon real time monitoring information will be implemented to mitigate potential impacts to walrus groups feeding in offshore locations and ensure that these impacts are limited to small numbers of animals. The National Marine Fisheries Service (NMFS) identified that Level B harassment of marine mammals begins at 160-dB re 1  $\mu$ Pa. The Service concurs with this determination and believes its use is applicable to walrus aggregations.

For that reason, whenever an aggregation of 12 or more walrus are detected within an acoustically verified 160-dB re 1  $\mu$ Pa disturbance zone ahead of or perpendicular to the seismic vessel track, the Service will require the operator to immediately power down the seismic airgun array and/or other acoustic sources to ensure sound pressure levels at the shortest distance to the aggregation do not exceed 160-dB re 1  $\mu$ Pa. The operator will not be allowed to proceed with powering up the seismic airgun array until it can be established that there are no walrus aggregations within the 160-dB zone based upon ship course, direction, and distance from last sighting.

Offshore exploration activities are expected to occur primarily in areas of open water some distance from the pack-ice; however, support vessels and/or aircraft may occasionally encounter aggregations of walrus hauled out onto sea ice. The sight, sound, or smell of humans and machines could potentially displace these animals from ice haul-outs. Ice management operations are expected to have the greatest potential for disturbances since these operations typically require vessels to accelerate, reverse direction, and turn rapidly, activities that maximize propeller cavitations and resulting noise levels. Previous studies suggest that icebreaking activities can displace some walrus groups up to several miles away; however, most groups of hauled out walrus showed little reaction beyond 805 m (0.5 mi). Impacts associated with transiting support vessels and aircraft are likely to be distributed in time and space. Therefore, noise and disturbance from aircraft and vessel traffic associated with exploration projects are expected to have relatively localized, short-term effects. Nevertheless, the potential for disturbance events resulting in injuries, mortalities, or mother-calf separations is of concern. The potential for injuries is expected to increase with the size of affected walrus aggregations. Adaptive mitigation measures designed to separate Industry activities from walrus aggregations at coastal haulouts and in sea-ice habitats are expected to reduce the potential for animal injuries, mortalities, and mother-calf separations. Restricting offshore exploration activities to the open-water season (July 1 to November 30) is also expected to reduce the number of potential interactions between walrus and Industry operations occurring in or near sea ice habitats. Adaptive operational restrictions, including an 800-m (0.5-mi) operational exclusion zone for marine

vessels, and a 305-m (1,000-ft) altitude restriction for aircraft flying near walrus groups hauled-out onto land or sea ice, are similarly expected to minimize disturbances to walrus hauled out onto ice or land.

Drilling operations are expected to occur at several offshore locations during the later stages of the regulations. Although drilling activities are expected to occur primarily during open water conditions, the dynamic movements of sea ice could transport walrus within range of drilling operations. The MMS permit stipulation identifying a 0.5-mile operational exclusion zone around groups of hauled-out walrus is expected to help mitigate disturbances to walrus near prospective drill sites. Mitigation measures specified in an LOA including requirements for ice-scouting, surveys for walrus and polar bears in the vicinity of active drilling operations and ice breaking activities, requirements for marine mammal observers onboard drill ships and ice breakers, and operational restrictions near walrus and polar bear aggregations are expected to further reduce the potential for interactions between walrus and drilling operations.

## 2. Waste Discharge and Oil Spills

The potential exists for fuel and oil spills to occur from seismic and support vessels, fuel barges, and drilling operations. Little is known about the effects of fuel and oil on walrus; however, walrus may react to fuel and oil much like other pinniped species. Damage to the skin of pinnipeds can occur from contact with oil because some of the oil penetrates into the skin, causing inflammation and ulcers. Exposure to oil can quickly cause permanent eye damage. In studies conducted on other pinniped species, pulmonary hemorrhage, inflammation, congestion, and nerve damage resulted after exposure to concentrated hydrocarbon fumes for a period of 24 hours. Walrus are extremely gregarious animals and normally associate in large groups; therefore, any contact with spilled oil or fuel could impact several individuals.

Exposure to oil could also impact benthic prey species. Bivalve mollusks, a favorite prey species of the walrus, are not effective at processing hydrocarbon compounds, resulting in highly concentrated accumulations and long-term retention of contamination within the organism. Exposure to oil may kill prey organisms or result in slower growth and productivity. Because walrus feed primarily on mollusks, they may be more vulnerable to a loss of this

prey species than other pinnipeds that feed on a larger variety of prey.

Although fuel and oil spills have the potential to cause adverse impacts to walrus and prey species, operational spills associated with the proposed exploration activities are not considered a major threat. Operational spills would likely be of a relatively small volume, and occur in areas of open water where walrus densities are expected to be relatively low. Furthermore, blowout prevention technology will be required for all exploratory drilling operations in the Chukchi Sea by the permitting agencies, and the MMS considers the likelihood of a blowout occurring during exploratory drilling in the Chukchi Sea as negligible (OCS EIS/EA MMS 2007–026). The MMS operating stipulations, including oil spill prevention and response plans, reduce both the risk and scale of potential spills. For these reasons, any impacts associated with an operational spill are expected to be limited to a small number of animals.

Despite the minimal risk, all projects will have oil spill contingency plans (specific to the project) that will be approved by the appropriate permitting agencies prior to the issuance of an LOA. The contingency plans have a wildlife component, which outlines protocols to minimize wildlife exposure, including polar bears and walrus, to oil spills.

### 3. Cumulative Effects

The following events have contributed to current environmental conditions in the Chukchi Sea and could also cumulatively affect Pacific walrus population status in the next five years:

#### *Commercial and Subsistence*

*Harvest*—Walrus have an intrinsically low rate of reproduction and are thus limited in their capacity to respond to exploitation. In the late 19th century, American whalers intensively harvested walrus in the northern Bering and southern Chukchi seas. Between 1869 and 1879, catches averaged more than 10,000 per year, with many more animals struck and lost. The population was substantially depleted by the end of the century, and the commercial hunting industry collapsed in the early 1900s. Since 1930, the combined walrus harvests of the United States and Russia have ranged from 2,300–9,500 animals per year. Notable harvest peaks occurred during 1930–1960 (4,500–9,500 per year) and in the 1980's (5,000–9,000 per year). Commercial hunting continued in Russia until 1991 under a quota system of up to 3,000 animals per year. Since 1992, the harvest of Pacific walrus has

been limited to the subsistence catch of coastal communities in Alaska and Chukotka. Harvest levels through the 1990s ranged from approximately 2,400–4,700 animals per year. Although recent harvest levels are lower than historic highs, lack of information on current population size or trend precludes an assessment of sustainable harvest rates.

*Climate Change*—Analysis of long-term environmental data sets indicates that substantial reductions in both the extent and thickness of the arctic sea-ice cover have occurred over the past 40 years. Record minimum sea ice extent was recorded in 2002, 2005, and again in 2007; sea ice cover in 2003 and 2004 was also substantially below the 20-year mean. Walrus rely on suitable sea ice as a substrate for resting between foraging bouts, calving, molting, isolation from predators, and protection from storm events. The juxtaposition of sea ice over shallow-shelf habitat suitable for benthic feeding is important to walrus. Recent trends in the Chukchi Sea have resulted in seasonal sea-ice retreat off the continental shelf and over deep Arctic Ocean waters, presenting significant adaptive challenges to walrus in the region. Reasonably foreseeable impacts to walrus as a result of diminishing sea ice cover include: shifts in range and abundance; increased vulnerability to predation and disturbance; declines in prey species; increased mortality rates resulting from storm events; and premature separation of females and dependent calves. Secondary effects on animal health and condition resulting from reductions in suitable foraging habitat may also influence survivorship and productivity. Future studies investigating walrus distributions, population status and trends, and habitat use patterns in the Chukchi Sea are important for responding to walrus conservation and management issues associated with environmental and habitat changes.

*Commercial Fishing and Marine Vessel Traffic*—Available data suggest that walrus rarely interact with commercial fishing and marine vessel traffic. Walrus are normally closely associated with sea ice, which limits their interactions with fishing vessels and barge traffic. However, as previously noted, the temporal and seasonal extent of the sea ice is projected to diminish in the future. Commercial shipping through the Northwest Passage and Siberian arctic waters may develop in coming decades. Commercial fishing opportunities may also expand should the sea ice continue to diminish. The result could be

increased temporal and spatial overlap between fishing and shipping operations and walrus habitat use and increased interactions between walrus and marine vessels.

*Past Offshore Oil and Gas Related Activities*—Oil and gas related activities have been conducted in the Chukchi and Beaufort Seas since the late 1960's. Much more oil and gas related activity has occurred in the Beaufort Sea than in the Chukchi Sea OCS. Pacific walrus do not normally range into the Beaufort Sea, and documented interactions between oil and gas activities and walrus have been minimal (see Observed Impacts of Oil and Gas Industry Activities on Pacific Walrus). The Chukchi Sea OCS has previously experienced some oil and gas exploration activity, but no development or production. Because of the transitory nature of past oil and gas activities in any given region, we do not think that any of these encounters had lasting effects on individuals or groups.

*Summary of Cumulative Effects*—Hunting pressure, declining sea ice due to climate change, and the expansion of commercial activities into walrus habitat all have potential to impact walrus. Combined, these factors are expected to present significant challenges to future walrus conservation and management efforts. The success of future management efforts will rely in part on continued investments in research investigating population status and trends and habitat use patterns. The effectiveness of various mitigation measures and management actions will also need to be continually evaluated through monitoring programs and adjusted as necessary. The decline in sea ice is of particular concern, and will be considered in the evaluation of future proposed activities and as more information on walrus population status becomes available.

*Contribution of Proposed Activities to Cumulative Impacts*—The proposed seismic surveys and exploratory drilling operations identified by the petitioners are likely to result in some incremental cumulative effects to walrus through the potential exclusion or avoidance of walrus from feeding or resting areas and disruption of associated biological behaviors. However, based on the habitat use patterns of walrus in the Chukchi Sea and their close association with seasonal pack ice, relatively small numbers of walrus are likely to be encountered in the open sea conditions where most of the proposed activities are expected to occur. Required monitoring and mitigation measures, designed to minimize interactions between authorized projects and

concentrations of resting or feeding walrus, are also expected to limit the severity of any behavioral responses. Therefore, we conclude that the proposed exploration activities, especially as mitigated through the regulatory process, are not at this time expected to add significantly to the cumulative impacts on the Pacific walrus population from past, present, and future activities that are reasonably likely to occur within the 5-year period covered by the regulations if adopted.

#### *B. Observed Impacts of Oil and Gas Industry Activities on Pacific Walruses*

Oil and gas related activities have been conducted in the Beaufort and Chukchi Seas since the late 1960s. Much more oil and gas related activity has occurred in the Beaufort Sea OCS than in the Chukchi Sea OCS. Many offshore activities required ice management (icebreaking), helicopter traffic, fixed-wing aircraft monitoring, other support vessels, and stand-by barges. Although Industry has encountered Pacific walruses while conducting exploratory activities in the Beaufort and Chukchi seas, to date, no walruses are known to have been killed due to encounters associated with Industry activities.

Pacific walruses do not normally range into the Beaufort Sea, although individuals and small groups have been observed. From 1994 to 2004, Industry monitoring programs recorded a total of nine walrus sightings involving a total of 10 animals. Three of the reported sightings involved potential disturbances to walruses; two sightings were of individual animals hauled-out onto the armor of Northstar Island, and one sighting occurred at the McCovey prospect, where a walrus appeared to react to helicopter noise. Physical effects or impacts to individual walruses were not noted. Because of the small numbers of walruses encountered by past and present oil and gas activity in the Beaufort Sea, impacts to the Pacific walrus population appear to have been minimal.

Three pre-lease seismic surveys were carried out in the Chukchi Sea OCS planning area in 2006, where marine mammal monitoring was based on vessel and aerial platforms. Marine mammal observers onboard the seismic and support vessels recorded a total of 1,186 walrus sightings during their operations. Most of the walrus sightings were reported by seismic support vessels during ice-scouting missions. Three hundred and eighteen of the walruses sighted (27 percent) exhibited some form of behavioral response to the vessels, primarily dispersal or diving.

Seismic vessels, operating in open water conditions, recorded a total of 33 walrus sightings. Marine mammal observers reported 19 incidents in which walruses were observed within a predetermined safety zone of ensonification, requiring the shut down of airgun arrays to prevent potential injuries. Based upon the transitory nature of the survey vessels, and the monitoring reports that noted behavioral reactions of the animals to the passage of the vessels, our best assessment is that these interactions resulted in no more than temporary changes in animal behavior. Additionally, the 2006 Chukchi Sea aerial surveys recorded a total of 1,882 walrus sightings. These regional aerial surveys were conducted in support of seismic activities as part of the marine mammal mitigation. During the three pre-lease seismic surveys conducted using vessel and aircraft platforms, a total of 3,068 walrus were observed. This represents a relatively small portion of the total number of animals that occurred at low densities within the open-water study area.

Aerial surveys and vessel-based observations of walruses were carried out in 1989 and 1990 to examine the responses of walruses to drilling operations at three Chukchi Sea drill prospects. Aerial surveys documented several thousand walruses in the vicinity of the drilling prospects; most of the animals (> 90 percent) were closely associated with sea ice. The monitoring reports concluded that: (1) Walrus distributions were closely linked with pack ice; (2) pack ice was near active drill prospects for relatively short time periods; and (3) ice passing near active prospects contained relatively few animals, concluded that effects of the drilling operations on walruses were limited in time, geographical scale, and proportion of the affected population.

#### *C. Evaluation*

Based on our review of the proposed activities; existing and proposed operating conditions and mitigation measures; information on the biology, ecology, and habitat use patterns of walruses in the Chukchi Sea; information on potential effects of oil and gas activities on walruses; and the results of previous monitoring efforts associated with Industry activity in the Beaufort and Chukchi Seas, we conclude that, while the incidental take (by harassment) of walruses is reasonably likely to or reasonably expected to occur as a result of the proposed activities, most of the anticipated takes will be limited to temporary, nonlethal disturbances impacting a relatively small numbers of

animals. Our review of the nature and scope of the proposed activities, when considered in light of the observed impacts of past exploration activities by Industry, indicates that it is unlikely that there will be any lethal take of walruses associated with these activities or any impacts on survivorship or reproduction.

#### *Polar Bears*

##### *A. Potential Impacts of Oil and Gas Industry Activities on Polar Bears*

###### *1. Disturbance*

In the Chukchi Sea, polar bears will have a limited presence during the open-water season during Industry operations. It is assumed they generally move to the northwestern portion of the Chukchi Sea and distribute along the pack-ice during this time, which is outside of the geographic region of the regulations. Additionally, they are found more frequently along the Chukotka coastline in Russia. This limits the chances of impacts on polar bears from Industry activities. Although polar bears have been observed in open-water, miles from the ice edge or ice floes, this has been a relatively rare occurrence.

*Offshore Activities.* In the open-water season, Industry activities will be limited to vessel-based exploration activities, such as seismic surveys and site clearance surveys and during the latter part of the regulatory period, offshore exploratory drilling may occur. These activities avoid ice floes and the multi-year ice edge; however, they could contact a limited number of bears in open water.

Seismic exploration activities in the Chukchi Sea could affect polar bears in a number of ways. Seismic ships and icebreakers may be physical obstructions to polar bear movements, although these impacts are of short-term and localized effect. Noise, sights, and smells produced by exploration activities could repel or attract bears, either disrupting their natural behavior or endangering them by threatening the safety of seismic personnel.

Little research has been conducted on the effects of noise on polar bears. Currently, researchers are studying the hearing sensitivity of polar bears to understand how noise affects polar bears. Polar bears are curious and tend to investigate novel sights, smells, and possibly noises. Noise produced by seismic activities could elicit several different responses in individual polar bears. Noise may act as a deterrent to bears entering the area of operation, or the noise could potentially attract curious bears.

In general, little is known about the potential for seismic survey sounds to cause auditory impairment or other physical effects in polar bears. Available data suggest that such effects, if they occur at all, would be limited to short distances and probably to projects involving large airgun arrays. There is no evidence that airgun pulses can cause serious injury, or death, even in the case of large airgun arrays. Additionally, the planned monitoring and mitigation measures include shut downs of the airguns, which will reduce any such effects that might otherwise occur if polar bears are observed in the ensonification zones. Polar bears normally swim with their heads above the surface, where underwater noises are weak or undetectable, and this behavior may naturally limit noise exposure to polar bears. Thus, it is doubtful that any single bear would be exposed to strong underwater seismic sounds long enough for significant disturbance, such as an auditory injury, to occur.

Polar bears are known to run from sources of noise and the sight of vessels, icebreakers, aircraft, and helicopters. The effects of fleeing from aircraft may be minimal if the event is short and the animal is otherwise unstressed. On a warm spring or summer day, a short run may be enough to overheat a well-insulated polar bear; however, fleeing from a working icebreaker may have minimal effects for a healthy animal on a cool day.

As already stated, polar bears spend the majority of their time on pack-ice during the open-water season in the Chukchi Sea or along the Chukotka coast, which limits the chance of impacts from human and Industry activities in the geographic region. In recent years, the Chukchi Sea pack-ice has receded over the Continental Shelf during the open water season. Although this poses potential foraging ramifications, by its nature the exposed open water creates a barrier between the majority of the ice pack-bound bear population and human activity occurring in open water, thereby limiting potential disturbance.

Researchers have observed that bears occasionally swim long distances during the open-water period seeking either ice or land. In 2005, researchers monitored one radio-collared individual as it swam through ice-free waters from Kotzebue north to the pack-ice 350 miles away. The bear began swimming on June 16, 2005, rested twice in open water (presumably on icebergs) and eventually reached the pack-ice on July 2, 2005. Researchers suspected that the bear was not swimming constantly, but found

solitary icebergs or remnants to haul-out on and rest. The movement is unusual, but highlights the ice-free environment that bears are being increasingly exposed to that requires increased energy demands.

Seismic activities avoid ice floes and the pack-ice edge; however, they may contact bears in open water. It is unlikely that seismic exploration activities would result in more than temporary behavioral disturbance to polar bears.

Vessel traffic could result in short-term behavioral disturbance to polar bears. If a ship is surrounded by ice, it is more likely that curious bears will approach. Any on-ice activities required by exploration activities create the opportunity for bear-human interactions. In relatively ice-free waters, polar bears are less likely to approach ships, although they could be encountered on ice floes. For example, during the late 1980s, at the Belcher exploration drilling site in the Beaufort Sea, in a period of little ice, a large floe threatened the drill rig at the site. After the floe was moved by an ice breaker, workers noticed a female bear with a cub-of-the-year and a lone adult swimming nearby. It was assumed these bears had been disturbed from the ice floe.

Ships and ice breakers may act as physical obstructions, altering or intercepting bear movements in the spring during the start-up period for exploration if they transit through a restricted lead system, such as the Chukchi Polynya. Polynyas are important habitat for ice seals and walrus, which makes them important hunting areas for polar bears. A similar situation could occur in the fall when the pack-ice begins to expand. The separation of polar bears, whether on land, on ice, or in water, and marine vessels by creating an operational exclusion zone would limit potential impact of marine vessels to polar bears.

High altitude routine aircraft traffic appears to have little to no effect on polar bears; however, extensive or repeated over-flights of fixed-wing aircraft or helicopters could disturb polar bears. Behavioral reactions of polar bears are expected to be limited to short-term changes in behavior that would have no long-term impact on individuals and no identifiable impacts on the polar bear population.

In the later years of the regulations, offshore exploratory drilling may occur during the open water seasons. Disturbances to polar bears by vessel and aircraft traffic used in support of exploratory drilling would be similar to those that have already been described.

Monitoring and mitigation measures required for open water, offshore activities will include, but will not be limited to: (1) A 0.5-mile operational exclusion zone around polar bear(s) on land, ice, or swimming; (2) MMOs on board all vessels; (3) requirements for ice-scouting; (4) surveys for polar bears in the vicinity of active operations and ice breaking activities; and (5) operational restrictions near polar bear aggregations. These mitigation measures are expected to further reduce the potential for interactions between polar bears and offshore operations.

**Onshore Activities.** Onshore activities will have the potential to interact with polar bears mainly during the fall and ice-covered season when bears come ashore to feed, den, or travel. Noise produced by Industry activities during the open-water and ice-covered seasons could potentially result in takes of polar bears at onshore activities. During the ice-covered season, denning female bears, as well as mobile, non-denning bears, could be exposed to oil and gas activities, such as seismic exploration or exploratory drilling facilities, and could potentially be affected in different ways.

Noise disturbance can originate from either stationary or mobile sources. Stationary sources include exploratory drilling operations and their associated facilities. Mobile sources can include vehicle and aircraft traffic in association with Industry activities, such as ice road construction and vibroseis programs.

Noise produced by stationary Industry activities could elicit several different responses in polar bears. The noise may act as a deterrent to bears entering the area, or the noise could potentially attract bears. Attracting bears to these facilities, especially exploration facilities in the coastal or nearshore environment, could result in human-bear encounters, which could result in unintentional harassment, lethal take, or intentional hazing (under separate authorization) of the bear.

During the ice-covered season, noise and vibration from exploratory drilling facilities could deter females from denning in the surrounding area, although polar bears have been known to den in proximity to industrial activities without any perceived impacts. For example, in 1991, two maternity dens were located on the south shore of a barrier island within 2.8 km (1.7 mi) of an already established production facility. In addition, during the ice-covered season of 2001–2002, two known polar bear dens were located within approximately 0.4 km and 0.8 km (0.25 mi and 0.5 mi) of remediation activities on Flaxman Island that were initiated after denning presumably

occurred. Through increased monitoring efforts, there were no observed impacts to denning success or the polar bears.

In contrast, information exists indicating that polar bears may have abandoned dens in the past due to exposure to human disturbance. For example, in January 1985, a female polar bear may have abandoned her den due to rolligon traffic, which occurred between 250 and 500 meters from the den site. Researcher disturbance created by camp proximity and associated noise, which occurred during a den emergence study in 2002 on the North Slope, may have caused a female bear and her cub(s) to abandon their den and move to the ice sooner than necessary. The female was observed later without the cub(s). While such events caused by Industry-related activities may have occurred in the Beaufort Sea, information indicates they have been infrequent and isolated.

In addition, polar bears exposed to routine industrial noises may acclimate to those noises and show less vigilance than bears not exposed to such stimuli. This implication came from a study that occurred in conjunction with industrial activities performed on Flaxman Island in 2002 and a study of undisturbed dens in 2002 and 2003 (N = 8). Researchers assessed vigilant behavior with two potential measures of disturbance: (1) Proportion of time scanning their surroundings and (2) frequency of observable vigilant behaviors. Bears exposed to industrial activity spent less time scanning their surroundings than bears in undisturbed areas and engaged in vigilant behavior significantly less often.

As with offshore activities, routine high-altitude aircraft traffic should have little to no effect on polar bears; however, extensive or repeated low-altitude over-flights of fixed-wing aircraft for monitoring purposes or helicopters used for re-supply of Industry operations could disturb polar bears. Behavioral reactions of non-denning polar bears are expected to be limited to short-term changes in behavior and would have no long-term impact on individuals and no impacts on the polar bear population. In contrast, denning bears could abandon or depart their dens early in response to repeated noise such as that produced by extensive aircraft over-flights occurring in close proximity to the den. Mitigation measures, such as minimum flight elevations over polar bears or areas of concern and flight restrictions around known polar bear dens, will be required, as appropriate, to reduce the likelihood that bears are disturbed by aircraft.

Noise and vibrations produced by vibroseis activities during the ice-covered season could potentially result in impacts on polar bears. During this time of year, denning female bears as well as mobile, non-denning bears could be exposed to and affected differently by potential impacts from seismic activities. The best available scientific information indicates that female polar bears entering dens, or females in dens with cubs, are more sensitive to noises than other age and sex groups. Standardized mitigation measures will be implemented to limit or minimize disturbance impacts to denning females. These Industry mitigation measures are currently in place in the Beaufort Sea and are implemented when necessary through LOAs. They will be implemented in the Chukchi Sea geographic region when necessary as well.

In the case of exploratory seismic or drilling activities occurring around a known bear den, each LOA will require Industry to have developed a polar bear interaction plan and will require Industry to maintain a 1-mile buffer between Industry activities and known denning sites to limit disturbance to the bear. In addition, we may require Industry to avoid working in known denning habitat depending on the type of activity, the location of activity, and the timing of the activity. To further reduce the potential for disturbance to denning females, we have conducted research, in cooperation with Industry, to enable us to accurately detect active polar bear dens through the use of Forward Looking Infrared (FLIR) imagery.

The FLIR imagery, as a mitigation tool, is used in cooperation with coastal polar bear denning habitat maps and scent-trained dogs. Industry activity areas, such as coastal ice roads and transitory exploratory activities, are compared to polar bear denning habitat, and transects are then created to survey the specific habitat within the Industry area. The FLIR heat signatures within a standardized den protocol are noted, and further mitigation measures are placed around these locations if dens are apparent. These measures include the 1-mile operational exclusion zone or increased monitoring of the site. FLIR surveys are more effective at detecting polar bear dens than visual observations. The effectiveness increases when FLIR surveys are combined with site-specific, scent-trained dog surveys.

Based on these evaluations, the use of FLIR technology, coupled with trained dogs, to locate or verify occupied polar bear dens is a viable technique that

helps to minimize impacts of Industry activities on denning polar bears. These techniques will continue to be required as conditions of LOAs, when appropriate.

In addition, Industry has sponsored cooperative research evaluating transmission of noise and vibration through the ground, snow, ice, and air and the received levels of noise and vibration in polar bear dens. This information has been useful to refine site-specific mitigation measures and placement of facilities.

Furthermore, as part of the LOA application for seismic surveys during denning season, Industry provides us with the proposed seismic survey routes. To minimize the likelihood of disturbance to denning females, we evaluate these routes along with information about known polar bear dens, historic denning sites, and delineated denning habitat. Should a potential denning site be identified along the survey route, FLIR or polar bear scent-trained dogs, or both, will be used to determine whether the den is occupied, in which case a 1-mile buffer surrounding the den will be required.

There is the potential for Industry activities other than seismic, such as transport activities and ice road construction, to contact polar bear dens as well. Known polar bear dens around the oil and gas activities are monitored by the Service, when practicable. Only a small percentage of the total active den locations are known in any year. Industry routinely coordinates with the Service to determine the location of Industry's activities relative to known dens and den habitat. General LOA provisions will be similar to those imposed on seismic activities and will require Industry operations to avoid known polar bear dens by 1 mile. There is the possibility that an unknown den may be encountered during Industry activities. Industry is required to contact the Service if a previously unknown den is identified. Communication between Industry and the Service and the implementation of mitigation measures, such as the 1-mile operational exclusion area around known dens or the temporary cessation of Industry activities, would ensure that disturbance is minimized.

Human encounters can be dangerous for both the polar bear and the human and are another type of onshore disturbance. These can occur during any onshore Industry activity. Whenever humans work in the habitat of the animal, there is a chance of an encounter, even though, historically, such encounters have been uncommon in association with Industry.

Encounters are more likely to occur during fall and winter periods when greater numbers of bears are found in the coastal environment searching for food and possibly den sites later in the season. Potentially dangerous encounters are most likely to occur at coastal exploratory sites because a higher percentage of bears transit through the coastal areas, rather than inland, and because of the temporary nature of exploratory activities. In the Beaufort Sea, Industry has developed and uses devices to aid in detecting polar bears, including human bear monitors, motion and infrared detection systems, and closed-circuit TV systems. Industry also takes steps to actively prevent bears from accessing facilities using safety gates and fences. The types of detection and exclusion systems are implemented on a case-by-case basis with guidance from the Service and depend on the location and needs of the facility. Industry will implement these same mitigative measures onshore in the Chukchi Sea region to minimize disturbance of polar bears.

Onshore drilling sites near the coastline could potentially attract polar bears. Polar bears use the coastline as a travel corridor. In the Beaufort Sea, the majority of polar bear observations have occurred along the coastline. Most bears were observed as passing through the area; however, nearshore facilities could potentially increase the rate of human-bear encounters, which could result in increased incidents of harassment of bears. Employee training and company policies through interaction plans will be implemented to reduce and mitigate such encounters. In the Beaufort Sea region, the history of the effective application of interaction plans has shown reduced interactions between polar bears and humans and no injuries or deaths to humans since the implementation of incidental take regulations. Therefore, the Service concludes that interaction plans are an effective means of reducing Industry impacts to polar bears.

Depending upon the circumstances, bears can be either repelled from or attracted to sounds, smells, or sights associated with onshore Industry activities. In the past, such interactions have been mitigated through conditions on the LOA, which require the applicant to develop a polar bear interaction plan for each operation. These plans outline the steps the applicant will take, such as garbage disposal, attractant management, and snow management procedures, to minimize impacts to polar bears by reducing the attraction of Industry activities to polar bears. Interaction plans also outline the chain

of command for responding to a polar bear sighting. In addition to interaction plans, Industry personnel participate in polar bear interaction training while on site.

Employee training programs are designed to educate field personnel about the dangers of bear encounters and to implement safety procedures in the event of a bear sighting. The result of these polar bear interaction plans and training allows personnel on site to detect bears and respond safely and appropriately. Often, personnel are instructed to leave an area where bears are seen. Many times polar bears are monitored until they move out of the area. Sometimes, this response involves deterring the bear from the site. If it is not possible to leave, in most cases bears can be displaced by using forms of deterrents, such as vehicles, vehicle horn, vehicle siren, vehicle lights, spot lights, or, if necessary, pyrotechnics (e.g., cracker shells). The purpose of these plans and training is to eliminate the potential for injury to personnel or lethal take of bears in defense of human life. Since 1993, when the incidental take regulations became effective in the Beaufort Sea, there has been no known instance of a bear being killed or Industry personnel being injured by a bear as a result of Industry activities. The mitigation measures associated with the Beaufort Sea incidental take regulations have proven to minimize human-bear interactions and will be part of the requirements of future LOAs associated with the Chukchi Sea incidental take regulations.

*Effect on Prey Species.* Ringed seals are the primary prey of polar bears. Bearded seals are also a prey source. Industry will mainly have an effect on seals through the potential for contamination (oil spills) or industrial noise disturbance. Oil and gas activities in the Chukchi Sea are anticipated to have the same effects of contamination from oil discharges for seals as those described in the current Beaufort Sea incidental take regulations (71 FR 43926; August 2, 2006) in the section "Potential Impacts of Waste Product Discharge and Oil Spills on Pacific Walruses and Polar Bears" and the "Pacific Walruses" subsection of that document. Studies have shown that seals can be displaced from certain areas, such as pupping lairs or haul-outs, and may abandon breathing holes near Industry activity. However, these disturbances appear to have minor effects and are short term. In the Chukchi Sea, offshore operations have the highest potential to impact seals; however, due to the seasonal aspect (occurring only during the open-water

season) of offshore operations, the Service anticipates minimal disturbance to ringed and bearded seals. In addition, the National Marine Fisheries Service (NMFS), having jurisdiction over the conservation and management of ringed and bearded seals, will evaluate the potential impacts of oil and gas exploration activities in the Chukchi Sea through their appropriate authorization process and will identify appropriate mitigation measures for those species, if a negligible finding is appropriate. The Service does not expect prey availability to be significantly changed due to Industry activities. Mitigation measures for pinnipeds required by MMS and NMFS will reduce the impact of Industry activities on ringed and bearded seals.

## 2. Waste Discharge and Potential Oil Spills

Individual polar bears can potentially be affected by Industry activities through waste product discharge and oil spills. Spills are unintentional releases of oil or petroleum products. In accordance with the National Pollutant Discharge Elimination System Permit Program, all North Slope oil companies must submit an oil spill contingency plan with their projects. It is illegal to discharge oil into the environment, and a reporting system requires operators to report spills.

According to MMS, on the Beaufort and Chukchi OCS, the oil industry has drilled 35 exploratory wells. During the time of this drilling, Industry has had 35 small spills totaling 26.7 bbl or 1,120 gallons (gal) in the Beaufort and Chukchi OCS. Of the 26.7 bbl spilled, approximately 24 bbl were recovered or cleaned up. Larger spills ( $\geq 1,000$  bbl) accounted for much of the annual volume. Six large spills occurred between 1985 and 2006 on the North Slope. These spills were terrestrial in nature and posed minimal harm to walruses and polar bears. Based on the history of effective application of oil spill plans, to date, no major exploratory offshore oil spills have occurred on the North Slope in either the Beaufort or Chukchi Seas.

Historical large spills (greater than 1,000 bbl) associated with Alaskan oil and gas activities on the North Slope have been production-related, and have occurred at production facilities or pipeline connecting wells to the Trans-Alaska Pipeline System. MMS estimates the chance of a large (greater than 1,000 bbl) oil spill from exploratory activities in the Chukchi Sea to be low based on the types of spills recorded in the Beaufort Sea. For this rule, potential oil spills for exploration activities will

likely occur with the marine vessels. From past experiences, MMS believes these will most likely be localized and relatively small. Spills in the offshore or onshore environments classified as small could occur during normal operations (e.g., transfer of fuel, handling of lubricants and liquid products, and general maintenance of equipment). There is a greater potential for large spills in the Chukchi Sea region from drilling platforms. However, exploratory drilling platforms have required containment ability in case of a blowout as part of their oil spill contingency plan, which means that the likelihood of a large release remains minimal.

The possibility of oil and waste product spills from Industry activities in the Chukchi Sea and the subsequent impacts on polar bears is a concern; however, given the seasonal nature of the requested Industry activities, the potential for negative impacts will be minimized. During the open-water season (June to October), there is some potential for spills from offshore Industry activities. At this time, bears in the open water or on land may encounter and be affected by any such oil spill. During the ice-covered season (November to May), onshore Industry activities will have the greatest likelihood of exposing transiting polar bears to potential oil spills. Although the majority of the Chukchi Sea polar bear population spends a large amount of time offshore on the annual or multi-year pack-ice and along the Russian coastline, some bears could encounter oil from a spill regardless of the season and location.

Small spills of oil or waste products throughout the year by Industry activities on land could potentially impact small numbers of bears. The effects of fouling fur or ingesting oil or wastes, depending on the amount of oil or wastes involved, could be short term or result in death. For example, in April 1988, a dead polar bear was found on Leavitt Island, in the Beaufort Sea, approximately 9.3 km (5 nautical miles) northeast of Oliktok Point. The cause of death was determined to be poisoning by a mixture that included ethylene glycol and Rhodamine B dye; however, the source of the mixture was unknown.

During the ice-covered season, mobile, non-denning bears would have a higher probability of encountering oil or other Industry wastes in the onshore environment than non-mobile, denning females. Current management practices by Industry, such as requiring the proper use, storage, and disposal of hazardous materials, minimize the potential occurrence of such incidents.

In the event of an oil spill, it is also likely that polar bears would be intentionally hazed to keep them away from the area, further reducing the likelihood of impacting individuals or the population.

Oil exposure by polar bears could occur through the consumption of contaminated prey, and by grooming or nursing, which could affect motility, digestion, and absorption. Death could occur if a large amount of oil were ingested. Oiling can also cause thermoregulatory problems and damage to various systems, such as the respiratory and the central nervous systems, depending on the amount of exposure. Oil may also affect the prey base of polar bears where possible impacts from the loss of a food source could reduce recruitment or survival of polar bears. A detailed description of potential effects of exposure to oil by polar bears can be found in the preamble to the Beaufort Sea Incidental Take Regulations (71 FR 43926; August 2, 2006).

### 3. Cumulative Effects

The Polar Bear Status Review describes cumulative effects of oil and gas development on polar bears in Alaska (see pages 175 to 181 of the status review). This document can be found at: <http://alaska.fws.gov/fisheries/mbm/polarbear/issues.htm>. The status review concentrated on oil and gas development in the Beaufort Sea because of the established presence of the Industry in the Beaufort Sea. The Service believes the conclusions of the status review will apply to Industry activities in the Chukchi Sea during the 5-year regulatory period because the exploratory activities in the Beaufort Sea are similar to those proposed in the Chukchi Sea.

In addition, in 2003 the National Research Council published a description of the cumulative effects that oil and gas development would have on polar bears and seals in Alaska. They concluded that:

(1) "Industrial activity in the marine waters of the Beaufort Sea has been limited and sporadic and likely has not caused serious cumulative effects to ringed seals or polar bears." Industry activity in the Chukchi Sea during the regulatory period will be limited to exploration activities, such as seismic, drilling, and support vessels.

(2) "Careful mitigation can help to reduce the effects of oil and gas development and their accumulation, especially if there is no major oil spill." The Service will be using mitigation measures similar to those established in the Beaufort Sea to limit impacts of

polar bears in the Chukchi Sea.

"However, the effects of full-scale industrial development off the North Slope would accumulate through the displacement of polar bears and ringed seals from their habitats, increased mortality, and decreased reproductive success." Full-scale development of this nature will not occur during the prescribed regulatory period in the Chukchi Sea.

(3) "A major Beaufort Sea oil spill would have major effects on polar bears and ringed seals." One of the concerns for future oil and gas development is for those activities that occur in the marine environment due to the chance for oil spills to impact polar bears or their habitats. No production activities are planned for the Chukchi Sea during the duration of these regulations. Oil spills as a result of exploratory seismic activity could occur in the Chukchi Sea; however, the probability of a large spill is expected to be minimal.

(4) "Climatic warming at predicted rates in the Beaufort and Chukchi sea regions is likely to have serious consequences for ringed seals and polar bears, and those effects will accumulate with the effects of oil and gas activities in the region."

(5) "Unless studies to address the potential accumulation of effects on North Slope polar bears or ringed seals are designed, funded, and conducted over long periods of time, it will be impossible to verify whether such effects occur, to measure them, or to explain their causes." Future studies in the Chukchi Sea will examine polar bear habitat use and distribution, reproduction, and survival relative to a changing sea ice environment.

A detailed description of climate change and its potential effects on polar bears by the Service can be found in the documents supporting the decision to list the polar bear as a threatened species under the ESA at <http://www.fws.gov/>. Additional detailed information by the USGS regarding the status of the SBS stock in relation to decreasing sea ice due to increasing temperatures in the Arctic, projections of habitat and populations, and forecasts of rangewide status can be found at: [http://www.usgs.gov/newsroom/special/polar\\_bears](http://www.usgs.gov/newsroom/special/polar_bears). These factors could alter polar bear habitat because seasonal changes, such as extended duration of open water, may preclude sea ice habitat use by restricting some bears to coastal areas. Biological effects on polar bears are expected to include increased movements or travel, changes in bear distribution throughout their range, changes to the access and allocation of denning areas, and increased open



water swimming. Demographic effects that may be changed due to climate change include changes in prey availability to polar bears, a potential reduction in the access to prey, and changes in seal productivity.

Locally in the Chukchi Sea, it is expected that the reduction of sea ice extent will affect the timing of polar bear seasonal movements between the coastal regions and the pack-ice. If the sea ice continues to recede as predicted, the Service anticipates that there may be an increased use of terrestrial habitat in the fall period by polar bears on the western coast of Alaska and an increased use of terrestrial habitat by denning bears in the same area, which may expose bears to Industry activity. Mitigation measures will be effective in minimizing any additional effects attributed to seasonal shifts in distributions of denning polar bears during the 5-year timeframe of the regulations. It is likely that, due to potential seasonal changes in abundance and distribution of polar bears during the fall, more frequent encounters may occur and that Industry may have to implement mitigation measures more often, for example, increasing polar bear deterrence events. In addition, if additional polar bear den locations are detected within industrial activity areas, spatial and temporal mitigation measures, including cessation of activities, may be instituted more frequently during the 5-year period of the rule. As with the Beaufort Sea, the challenge in the Chukchi Sea will be predicting changes in ice habitat and coastal habitats in relation to changes in polar bear distribution and use of habitat.

The proposed activities (seismic surveys and exploratory drilling operations) identified by the petitioners are likely to result in some incremental cumulative effects to polar bears during the 5-year regulatory period. This could occur through the potential exclusion or avoidance of polar bears from feeding, resting, or denning areas and disruption of associated biological behaviors. However, the level of cumulative effects, including those of climate change, during the 5-year regulatory period would result in less than negligible effects on the bear population.

#### *B. Observed Impacts of Oil and Gas Industry Activities on Polar Bears*

Information regarding interactions between oil and gas activities and polar bears in Canada, the Beaufort Sea, and the Chukchi Sea has been collected for several decades. This information is useful in predicting how polar bears are

likely to be affected by the proposed activities.

In 1990, in conjunction with the Shell Western E&P, Inc. walrus monitoring program, a total of 25 polar bears were observed on the pack ice in the Chukchi Sea between June 29 and August 11, 1990. Seventeen bears were encountered by the support vessel, *Robert LeMeur*, during an ice reconnaissance survey before drilling began at the prospects. During drilling operations, four bears were observed near (<9 km or 5 n mi) active prospects, and the remainder were considerably beyond (15–40 km or 8–22 n mi.). These bears responded to the drilling or icebreaking operations by approaching (two bears), watching (nine bears), slowly moving away (seven bears), or ignoring (five bears) the activities; response was not evaluated for two bears. The period of exposure to the operations was generally short because precautions were taken to minimize disturbances, including adjusting cruise courses away from bears. Similar precautions were followed in 1989, when 18 bears were sighted in the Chukchi pack ice during the monitoring program. The researchers of the 1990 monitoring program concluded that: (1) Polar bear distributions were closely linked to the pack ice; (2) the pack ice was near the active prospects for a relatively brief time; and (3) the ice passing near active prospects contained relatively few animals.

In 2006, four individual polar bears were sighted during three oil and gas seismic surveys on the Chukchi Sea. All the bears were observed by seismic support vessels. Three of the four bears were observed walking on ice, and one animal was observed swimming. Two of the four reacted to the vessel by distancing itself from the vessel. All four sightings occurred between September 2 and October 3, 2006.

Five polar bear observations (11 individuals) were recorded during the University of Texas at Austin's marine geophysical survey performed by the U.S. Coast Guard (USCG) Cutter *Healy* in 2006. This survey was located in the northern Chukchi Sea and Arctic Ocean. All bears were observed on the ice between July 21 and August 19. No polar bears were in the water where they could have been subject to appreciable noise levels from operating airguns. The closest point of approach distances of bears from the *Healy* ranged from 780 m to 2.5 km. One bear was observed approximately 575 m from a helicopter conducting ice reconnaissance. Four of the groups exhibited possible reactions to the helicopter or vessel, suggesting that

disturbances from seismic operations can be short-term and limited to minor changes in behavior.

In 2007, at the Intrepid exploration site located on the Chukchi Sea coast south of Barrow, a female bear and her cub were observed approximately 100 meters near a pad. The bear did not appear concerned about the activity and, while being observed by a bear monitor, the female changed her direction of movement and left the area. This is another example of a polar bear expressing minimal behavior change due to an interaction with Industry and it is similar to encounters between polar bears and Industry that have been documented in the Beaufort Sea.

Additional information exists on Industry and polar bear encounters in the Beaufort Sea. Documented impacts on polar bears by the oil and gas industry in the Beaufort Sea during the past 30 years appear minimal. Polar bears spend time on land, coming ashore to feed, den, or move to other areas. Recent studies suggest that bears are spending more time on land than they have in the past, perhaps in response to changing ice conditions.

Annual monitoring reports from Industry activities and community observations indicate that fall storms force bears to concentrate along the coastline where bears remain until the ice returns. For this reason, polar bears have been encountered at or near most coastal and offshore production facilities, or along the roads and causeways that link these facilities to the mainland. During those periods, the likelihood of interactions between polar bears and Industry activities increases. From Industry monitoring reports most bears are observed within a mile of the coastline. Similarly, we expect intermittent periods with high concentrations of bears to occur along the Chukchi Sea coastline.

The majority of actual impacts on polar bears in the Beaufort Sea have resulted from direct human-bear encounters. Monitoring efforts by Industry required under Beaufort Sea regulations for the incidental take of polar bears resulted in the documentation of various types of interactions between polar bears and Industry. A total of 269 LOAs have been issued for incidental (unintentional) take of polar bears in regard to oil and gas activities between 1993 to 2005; approximately 76 percent were for exploration activities.

In 2004, the most recent year where records are complete, the oil and gas industry reported 89 polar bear sightings involving 113 individual bears. Polar bears were more frequently

sighted from August to January. Seventy-four sightings were of single bears, and 15 sightings consisted of family groups. Offshore oil facilities, Northstar and Endicott, accounted for 63 percent of all polar bear sightings, 42 percent and 21 percent, respectively. This shows that Industry activities that occur on or near the Beaufort Sea coast have a greater probability of encountering polar bears than Industry activities occurring inland. Fifty-nine percent (n=53) of polar bear sightings consisted of observations of polar bears traveling through or resting near the monitored areas without a perceived reaction to human presence. Forty-one percent (n=36) of polar bear sightings involved Level B harassment, where bears were deterred from industrial areas with no injury.

We expect similar trends in the coastal areas of the Chukchi Sea. These include a higher frequency of polar bears observed on land during the fall and early winter months, single bears seen more frequently than family groups, and a higher percentage of bears observed moving passively through Industry areas than the percentage of bears involved in interactions.

Prior to issuance of regulations, lethal takes by Industry were rare. Since 1968, there have been only two documented cases of lethal take of polar bears associated with oil and gas activities. In both instances, the lethal take was reported to be in defense of human life. In winter 1968–1969, an Industry employee shot and killed a polar bear. In 1990, a female polar bear was killed at an exploratory drill site on the west side of Camden Bay. In contrast, 33 polar bears were killed in the Canadian Northwest Territories from 1976 to 1986 due to encounters with Industry. Since the beginning of the incidental take program, which includes measures that minimize impacts to the species, no polar bears have been killed due to encounters associated with Industry activities on the North Slope. For this reason, Industry has requested that these regulations cover only nonlethal, incidental take. We anticipate this nonlethal trend to continue in the Chukchi Sea.

### C. Evaluation

The Service anticipates that potential impacts of seismic noise, physical obstructions, human encounters, changes in distribution or numbers of prey species, oil spills, and cumulative effects on polar bears would be limited to short-term changes in behavior that would have no long-term impact on individuals or identifiable impacts to the polar bear population during the 5-

year regulatory period. Individual polar bears may be observed in the open water during offshore activities in Alaska waters, but the vast majority of the bear populations will be found on the pack-ice or along the Chukotka coastline in Russia during this time of year. These locations are not near the proposed Industry activities. Because there will be few encounters, and mitigation measures will be in place, it is unlikely that there will be any lethal take due to Industry activities. Our experience in the Beaufort Sea similarly suggests that there is unlikely to be any lethal take of bears due to Industry exploratory activity.

Potential impacts to bears will be mitigated through various requirements stipulated within LOAs. Mitigation measures that will be required for all projects include a polar bear interaction plan and a record of communication with affected villages that may serve as the precursor to a POC with the village to mitigate effects of the project on subsistence activities. Mitigation measures that will be used on a case-by-case basis include the use of trained marine mammal observers associated with offshore, marine activities; bear monitors for onshore activities; the use of den habitat maps (where appropriate); the use of FLIR or polar bear scent-trained dogs to determine the presence or absence of dens; timing of the activity to limit disturbance around dens; the 1-mile buffer surrounding known dens; and suggested work actions around known dens. The Service implements certain mitigation measures based on need and effectiveness for specific activities based largely on timing and location. For example, the Service will implement different mitigation measures for a 2-month-long onshore exploration project 20 miles inland, than for an offshore drilling project. Based on past monitoring information, bears are more prevalent in the coastal areas than 20 miles inland. Therefore, the monitoring and mitigation measures that the Service deems appropriate must be implemented to limit the disturbance to bears, and the measures deemed necessary to limit human-bear interactions may differ.

Potential impacts of Industry waste products and oil spills suggest that individual bears could be impacted by this type of disturbance were it to occur. Depending on the amount of oil or wastes involved, and the timing and location of a spill, impacts could be short-term, chronic, or lethal. In order for bear population reproduction or survival to be impacted, a large-volume oil spill would have to take place.

According to MMS, during exploratory activities, the probability of a large oil spill occurring throughout the duration of these proposed regulations (five years) is very small. In addition, protocols for controlling waste products in project permits will limit exposure of bears to the waste products. Oil spill contingency plans are authorized by project permitting agencies and, if necessary, will also limit the exposure of bears to oil.

Furthermore, mitigation measures imposed through MMS lease stipulations are designed to avoid Level A harassment (injury), reduce Level B harassment, reduce the potential for population-level significant adverse effects on polar bears, and avoid an unmitigable adverse impact on their availability for subsistence purposes. Additional mitigation measures described in the rule will help reduce the level of Industry impacts to polar bears during the exploration activities through the promulgation of incidental take regulations and the issuance of LOAs with site-specific operating restrictions and monitoring requirements, which will provide mitigation and protection for polar bears. Therefore, we conclude that the proposed exploration activities, as mitigated through the regulatory process, will impact relatively small numbers of animals, are not expected to have more than negligible impacts on polar bears in the Chukchi Sea and will not have any significant, adverse impact on the availability of polar bears for subsistence uses.

### Potential Effects of Oil and Gas Industry Activities on Subsistence Uses of Pacific Walruses and Polar Bears

Walruses and polar bear have cultural and subsistence significance to the Inupiat Eskimos inhabiting the north coast of Alaska. Four North Slope communities are considered within the potentially affected area of Industry activities: Point Hope, Point Lay, Wainwright, and Barrow. The open-water season for oil and gas exploration activities coincides with peak walrus hunting activities in these communities. The subsistence harvest of polar bears can occur year round in the Chukchi Sea, depending on ice conditions, with peaks usually occurring in spring and fall.

Noise and disturbances associated with oil and gas exploration activities have the potential to adversely impact subsistence harvests of walruses and polar bears by displacing animals beyond the hunting range of these communities. Disturbances associated with exploration activities could also

heighten the sensitivity of animals to humans with potential impacts to hunting success. Little information is available to predict the effects of exploration activities on the subsistence harvest of walrus and polar bears. Hunting success varies considerably from year to year because of variable ice and weather conditions. Changing walrus distributions due to declining sea ice may also directly affect hunting opportunities. As ice retreats past the continental shelf, walrus have limited places to haul-out at sea to rest. In 2007, multiple new and larger terrestrial haul-outs were documented. These terrestrial haul-outs allowed for increased access to walrus for subsistence harvests.

The MMS and the petitioners believe that exploration activities can be conducted in a manner that will not result in an adverse impact on subsistence hunting of marine mammals in the Chukchi Sea. Lease Sale Area 193 includes a 25-mile coastal deferral zone, i.e., no lease sales will be offered within 25 miles of the coast, which is expected to reduce the impacts of exploration activities on subsistence hunting. Offshore seismic exploration will be restricted prior to July 1 of each open water season to allow migrating marine mammals the opportunity to disperse from the coastal zone. It is noted that support vessels and aircrafts are expected to regularly transit the coastal deferral zone and have the potential to disturb marine mammals in coastal hunting areas. The MMS Lease stipulations will require lessees to consult with the subsistence communities of Barrow, Wainwright, Point Lay, and Point Hope prior to submitting an Operational Plan to MMS for exploration activities. The intent of these consultations is to identify any potential conflicts between proposed exploration activities and subsistence hunting opportunities in the coastal communities. Where potential conflicts are identified, MMS may require additional mitigation measures as identified by NMFS and the Service through MMPA authorizations.

In addition to the existing MMS lease stipulations and mitigation measures described above, the Service has also developed additional mitigation measures that will be implemented through these incidental take regulations. The following LOA stipulations, which will mitigate potential impacts to subsistence walrus and polar bear hunting from the proposed activities, apply to incidental take authorizations:

(1) Prior to receipt of an LOA, applicants must contact and consult with the communities of Point Hope,

Point Lay, Wainwright, and Barrow through their local government organizations to identify any additional measures to be taken to minimize adverse impacts to subsistence hunters in these communities. A POC will be developed if there is a general concern from the community that the proposed activities will impact subsistence uses of Pacific walrus or polar bears. The POC must address how applicants will work with the affected Native communities and what actions will be taken to avoid interference with subsistence hunting of walrus and polar bears. The Service will review the POC prior to issuance of the LOA to ensure that any potential adverse effects on the availability of the animals are minimized.

(2) Take authorization will not be granted for activities in the marine environment which occur within a 40-mile radius of Barrow, Wainwright, Point Hope, or Point Lay, unless expressly authorized by these communities through consultations or through a POC. This condition is intended to limit potential interactions between Industry activities and subsistence hunting in near-shore environments.

(3) Offshore seismic exploration activities will be authorized only during the open-water season, which will not exceed the period of July 1 to November 30. This condition is intended to allow communities the opportunity to participate in subsistence hunts for polar bears without interference and to minimize impacts to walrus during the spring migration. Exemption waivers to this operating condition may be issued by the Service on a case-by-case basis, based upon a review of seasonal ice conditions and available information on walrus and polar bear distributions in the area of interest.

(4) A 15-mile separation must be maintained between all active seismic surveys and/or exploratory drilling operations to mitigate cumulative impacts to resting, feeding, and migrating walrus.

#### Evaluation

Based on the best scientific information available and the results of harvest data, including affected villages, the number of animals harvested, the season of the harvests, and the location of hunting areas, we find that the effects of the proposed exploration activities in the Chukchi Sea region would not have an unmitigable adverse impact on the availability of walrus and polar bears for taking for subsistence uses during the period of the rule. In making this finding, we considered the following:

(1) Historical data regarding the timing and location of harvests; (2) effectiveness of mitigation measures stipulated by MMS-issued operational permits; (3) Service regulations to be codified at 50 CFR 18.118 for obtaining an LOA, which include requirements for community consultations and POCs, as appropriate, between the applicants and affected Native communities; (4) effectiveness of mitigation measures stipulated by Service-issued LOAs; and (5) anticipated effects of the applicants' proposed activities on the distribution and abundance of walrus and polar bears.

#### Summary of Take Estimates for Pacific Walrus and Polar Bears

##### *Small Numbers Determination*

As discussed in the "Biological Information" section, the dynamic nature of sea ice habitats influences seasonal and annual distribution and abundance of polar bears and walrus in the specified geographical region (eastern Chukchi Sea). The following five-factor analysis demonstrates that only small numbers of Pacific walrus and polar bears are likely to be taken incidental to the described Industry activities relative to the number of walrus and polar bears that are expected to be unaffected by those activities. This analysis is based upon known distribution patterns and habitat use of Pacific walrus and polar bears.

1. *The number of walrus and polar bears occupying the specified geographical region during the open water exploration season is expected to be proportionally smaller than the number of animals distributed in other regions.* During the summer months, the Pacific walrus population ranges well beyond the boundaries of the OCS lease sale area. Over the past decade, significant concentrations of animals have been observed during the open-water season at coastal haul-outs along the northern coastline of Chukotka, Russia, presumably in response to low ice concentrations in offshore areas. There are no recent aerial surveys along the western (Russian) portion of the Chukchi Sea, however, observations by hunters in 2007 noted an estimated 75,000 to 100,000 walrus on haul-outs along the Russian coastline. In comparison, aerial surveys in the U.S. sector of the Chukchi Sea in 2007 estimated 2,000–5,000 walrus were using coastal haul-outs along the Chukchi Sea coast of Alaska. Several tens of thousands of walrus (primarily bulls) are also known to use coastal haul-outs south of the Chukchi, in the Bering Sea, during the ice free season.

Based on this distribution information, we can infer that the number of walrus expected in the area of operation during the open water season when no ice is present is at least an order of magnitude less than the number of walrus utilizing pack ice and land habitats outside the proposed area of operations.

Polar bears also range well beyond the boundaries of the Chukchi Sea lease sale area. Even though they are naturally widely distributed throughout their range, a relatively large proportion of bears from the CS population utilize the western Chukchi sea region of Russia. Concurrently, polar bears from the SBS population predominantly utilize the central Beaufort Sea region of the Alaskan and Canadian Arctic. These areas are well outside of the geographic region of these regulations.

2. *Within the specified geographical region, the number of walruses and polar bears utilizing open water habitats, where the primary activity (seismic surveys) during offshore exploration operations will occur, is expected to be small relative to the number of animals utilizing pack ice habitats or coastal areas.* Both walruses and polar bears are poorly adapted to life in the open ocean. Unlike other pinnipeds, walruses must periodically "haul-out" onto ice or land to rest. The previous aerial survey efforts in the offshore region of the eastern Chukchi Sea found that most (80–96 percent) walruses were closely associated with sea ice and that the number of walruses observed in open water decreased significantly with distance from the pack ice. Previous survey efforts in the region in 1975, 1980, 1985, and 1990 concluded that most walruses will remain closely associated with floating pack ice during the open water season. We expect this behavior to continue. Under minimal or no-ice conditions, we expect most walruses will either migrate out of the region in pursuit of more favorable ice habitats, or relocate to coastal haul-outs (primarily in Russia) where their foraging trips will be restricted to near-shore habitats.

Polar bears are capable of swimming long distances across open water. However, based on scientific data, polar bears are expected to remain closely associated with either sea ice or coastal zones during the open water season where food availability is high. We expect the number of walruses and polar bears using pelagic waters during proposed open-water exploration activities to be very small relative to the number of animals exploiting more favorable habitats in the region (i.e., pack ice habitats and/or coastal haul-outs and near-shore environments).

3. *Within the specified geographical region, the footprint of authorized projects is expected to be small relative to the range of polar bear and walrus in the region.* The Chukchi Sea lease sale area represents 1.9 million square kilometers of potential walrus and polar bear habitat, comprising approximately 20 percent of the total area where walrus and polar bears would be expected to be found in the Chukchi Sea region. The typical marine seismic survey project is expected to sample less than 3 percent of this area and, because of difficulties associated with operating in and near pack ice, survey vessels will be operating in habitats where walrus and polar bear densities are expected to be low. Although it is impossible to predict with certainty the number of walruses or polar bears that might be present in the offshore environment of the lease sale area in a given year, or in a specific project area during the open water season, based on habitat characteristics where most exploration activities will occur (open-water environments) and the small sphere of influence that an authorized project would have on the lease sale area; based on scientific knowledge and observation of the species, only small numbers of walruses and polar bears will come in contact with Industry operations, and of those, only a small percentage will exhibit behavior constituting take.

As detailed in the section, "Description of Geographic Region," terrestrial habitat encompasses approximately 10,000 square kilometers of the NPR-A. A smaller portion of this habitat situated along the coast could be potential polar bear denning habitat. However, most coastal denning for the Chukchi Sea bears occurs in Russia, outside of the geographic region. Where terrestrial activities may occur in coastal areas of Alaska in polar bear denning habitat, specific mitigation measures will be required to minimize Industry impacts.

4. *Monitoring reports required of the industry in 2006 in the region where the majority of the proposed activities would occur provides insight on the level and significance of potential take.* Of the small number of walruses sighted in 2006, approximately one-fourth (318 of the 1,186 walrus documented by observers onboard a seismic vessel) of the animals observed exhibited some form of behavioral response to the same type of seismic activity covered by this rule and as such qualified as level B harassment take. The behavioral responses recorded were short-term nonlethal responses and the effects were limited to short-term, minor behavioral changes, primarily dispersal or diving.

None of the take that occurred would have affected reproduction, survival, or other critical life functions.

In 2006, sightings of 17 polar bears were reported by vessel monitoring programs for seismic activities that occurred in the region where the majority of the proposed activities will occur. Of these, only 6 of the polar bears exhibited some form of behavioral response and all effects were limited to short-term, minor behavioral changes, primarily moving away from the distraction. Therefore, none of the take that occurred would have affected reproduction, survival, or other critical life functions.

Although the actual number of animals exhibiting some form of behavioral response will vary from year to year related to the exact amount of industrial activity, we anticipate that response will be comparable to the take that occurred in 2006 in terms of the number of animals appearing to be disturbed by the activity as a proportion of the number of animals sighted. We also anticipate that the type of take will be similar to that observed in 2006, i.e., nonlethal, minor, short-term behavioral changes.

5. *Monitoring requirements and adaptive mitigation measures are expected to significantly limit the number of incidental takes of animals.* Holders of an LOA will be required to adopt monitoring requirements and mitigation measures designed to reduce potential impacts of their operations on walruses and polar bears. Restrictions on the season of operation (July–November) for marine activities are intended to limit operations to ice free conditions when walrus and polar bear densities are expected to be low in the proposed area of Industry operation. Monitoring programs are required to inform operators of the presence of marine mammals and sea ice incursions. Adaptive management responses based on real-time monitoring information (described in these regulations) will be used to avoid or minimize interactions with walruses and polar bears. For Industry activities in terrestrial environments where denning polar bears may be a factor, mitigation measures will require that den detection surveys be conducted and Industry will maintain at least a one-mile distance from any known polar bear den. A full description of the mitigation, monitoring, and reporting requirements associated with an LOA which will be requirements for Industry can be found in Section 18.118.

To summarize, only a small number of the Pacific walrus population and the Chukchi Sea and Southern Beaufort Sea

polar bear population will be impacted by the proposed Industry activity. This statement can be made with a high level of confidence because:

(1) Based upon the reported distribution of 100,000 walrus on haul-outs on the Chukotka coast and between 2,000 to 5,000 walrus in aerial surveys in 2007 on haul-outs on the Alaska coast, as well as the estimated 5,000 walrus in Bristol Bay; the number of walrus expected in the area of operation during the open water season when no ice is present is at least an order of magnitude less than the number of walrus utilizing pack ice and land habitats outside the proposed area of operations. Additionally, although polar bears are capable of swimming long distances across open water, based on scientific evidence polar bears are expected to remain closely associated with either sea ice or coastal zones where food availability is high and not in open water where the proposed activity will occur;

(2) the specific geographic region where the proposed activity will occur is approximately 20 percent of the total area where walrus and polar bears would be expected to be found, and the actual marine footprint of the Industry operations comprises less than 3 percent of this area, all of which is expected to be open water during seismic operations;

(3) based upon 2006 onboard observations, 1,186 walrus were observed by support vessels on ice scouting missions and of those, approximately 318 exhibited mild forms of behavioral response. Only 17 polar bears were observed and only 6 exhibited mild forms of behavioral response. In both instances, less than half of the animals encountered exhibited any behavioral response and those that responded did so in a mild fashion. Consequently, with the anticipation of approximately five vessels operating annually, the aggregate number of takes will remain small in comparison to the species population in the Chukchi Sea.

(4) importantly, the behavioral response observed was a very passive form of take. For walrus the response was primarily dispersal or diving and for polar bears primarily moving away from the disturbance. Such response would not have affected reproduction, survival, or other critical life functions. This same level of behavioral response is expected if encounters occur during future operations;

(5) the restrictive monitoring and mitigation measures that will be placed on Industry activity will further reduce the minimal impacts expected; and

(6) although sea ice decline as the result of climate change is likely to result in significant impacts to polar bears and walrus in the future, it will also likely reduce the number of polar bears and walrus occurring in the proposed area during Industry activity, further reducing the potential for interaction.

In conclusion, given the spatial distribution, habitat requirements, and observed and reported data, the number of animals coming in contact with the industry activity will be small by an order of magnitude to the Chukchi Sea walrus and the Chukchi and South Beaufort Sea polar bear populations. Therefore, even in the face of increased industry activity, the number of walrus and polar bear taken by this activity will be small and the effect on their respective populations negligible.

#### *Negligible Effects Determination*

Based upon our review of the nature, scope, and timing of the proposed oil and gas exploration activities and mitigation measures, and in consideration of the best available scientific information, it is our determination that the proposed activities will have a negligible impact on Pacific walrus and on polar bears. Factors considered in our negligible effects determination include:

1. *The behavior and distribution of walrus and polar bears at low densities utilizing areas that overlap with Industry is expected to limit the amount of interactions between walrus, polar bears, and Industry.* The distribution and habitat use patterns of walrus and polar bears in conjunction with the likely area of Industrial activity results in a small portion of the population in the area of operations and, therefore, likely to be affected. As discussed in the section "Biological Information" (see Pacific Walrus section), walrus are expected to be closely associated with ice and land haulouts during the operating season. Only small numbers of walrus are likely to be found in open water habitats where offshore exploration activities will occur. In 2007, up to 100,000 walrus were observed on haul-outs on the Chukotka coastline (where the vast majority of animals were females and calves) and approximately 2,000 to 5,000 walrus were observed at haul-outs on the Alaska Chukchi Sea coast, as well as the annual counts of approximately 5,000 walrus in Bristol Bay. These areas are outside of the Chukchi Sea Lease Sale area. In addition, the primary industrial activities that may affect walrus will occur outside the walrus breeding

season. Animals in the area of operations will either be traveling through the area or feeding.

In the open water season, polar bears are closely associated with pack-ice and are unlikely to interact with open-water industrial activities for the same reasons discussed in the Small Numbers Determination. Likewise, polar bears from the CS and SBS populations are widely distributed at extremely low densities and range outside of the geographic region of these regulations.

2. *The predicted effects of proposed activities on walrus and polar bears will be nonlethal, temporary passive takes of animals.* The documented impacts of previous Industry activities on walrus and polar bears, taking into consideration cumulative effects, provides direct information that the types of activities analyzed for this rule will have minimal effects and will be short-term, temporary behavioral changes. The Service predicts the effects of industry activities on walrus and polar bears will have a low frequency of occurrence, the effects will be sporadic and of short duration. Additionally, effects will involve very passive forms of take. This passive displacement will be limited to small numbers of walrus and polar bears. Displacement will not result in more than negligible effects because habitats of similar values are not limited to the area of activity and are abundantly available within the region.

A description of Industry impacts in 2006, in the Chukchi Sea, where the majority of the proposed activities will occur, showcase the number and type of impacts that will likely occur during the regulatory period. In 2006, vessel based monitors reported 1,186 walrus sightings during Industry seismic activity. Three hundred eighteen of the walrus sighted exhibited some form of behavioral response to the vessels, primarily dispersal or diving. Again, other than a short-term change in behavior, no negative effects were noted and the numbers of animals demonstrating a change in behavior was small in comparison to those observed in the area.

During the same time, polar bears documented during Industry seismic surveys in the Chukchi Sea were observed walking on ice and swimming. Bears reacted to a vessel by distancing themselves from the vessel. In addition, polar bear reactions recorded during a research marine geophysical survey in 2006 documented that bears exhibited minor reactions to helicopter or vessel traffic, suggesting that disturbances from seismic operations can be short-term and limited to minor changes in

behavior. Likewise, in the terrestrial environment, bears observed near a pad at the Intrepid project in 2007, expressed minimal behavioral changes where they altered direction while being observed by a bear monitor.

3. *The footprint of authorized projects is expected to be small relative to the range of polar bear and walrus populations.* A limited area of activity will reduce the potential to exposure of animals to Industry activities and limit potential interactions of those animals using the area, such as walruses feeding in the area or polar bears or walruses moving through the area.

4. *Mitigation measures will limit potential effects of industry activities.* As described in the Small Numbers Determination, holders of an LOA will be required to adopt monitoring requirements and mitigation measures designed to reduce potential impacts of their operations on walruses and polar bears. Seasonal restrictions, monitoring programs required to inform operators of the presence of marine mammals and sea ice incursions, den detection surveys for polar bears, and adaptive management responses based on real-time monitoring information (described in these regulations) will be used to avoid or minimize interactions with walruses and polar bears; limiting Industry effects on these animals.

5. *The potential impacts of climate change, such as a decline in sea ice, for the duration of the regulations (2008–2012) has the potential to result in a redistribution of walruses and polar bears away from the geographic region and during the season of Industry activity.* Decline in sea ice is likely to result in significant impacts to polar bear and walrus populations in the future. Recent trends in the Chukchi Sea have resulted in seasonal sea-ice retreat off the continental shelf and over deep Arctic Ocean waters, presenting significant adaptive challenges to walruses in the region. Reasonably foreseeable impacts to walruses as a result of diminishing sea ice cover include: shifts in range and abundance; increased reliance on coastal haul-outs; and increased mortality associated with predation and disturbances events at coastal haul-outs. Although declining sea ice and its causes are pressing conservation issues for ice dependent species, such as polar bears and walruses, activities proposed by Industry and addressed in this five-year rule will not adversely impact the survival of these species as the likely response to near-term climate-driven change (retreat of sea ice) will result in the species utilizing areas (such as coastal haul-outs by walrus and the edge

of the ice shelf by polar bears) that are outside the proposed areas of Industrial activity and during the season (open-water) when the majority of activities will be conducted. As a result of continued ice retreat due to climate change, we expect fewer animals in the area of proposed Industry activities during the open water season.

We therefore conclude that any incidental take reasonably likely to or reasonably expected to occur as a result of carrying out any of the activities authorized under these regulations will have no more than a negligible effect on Pacific walruses and polar bears utilizing the Chukchi Sea region, and we do not expect any resulting disturbances to negatively impact the rates of recruitment or survival for the Pacific walrus and polar bear populations. These regulations do not authorize lethal take, and we do not anticipate any lethal take will occur.

### Findings

We make the following findings regarding this

#### *Small Numbers*

The Service finds that any incidental take reasonably likely to result from the effects of the proposed activities, as mitigated through this regulatory process, will be limited to small numbers of walruses and polar bears. In making this finding the Service developed a “small numbers” analysis based on: (a) The seasonal distributions and habitat use patterns of walruses and polar bears in the Chukchi Sea; (b) the timing, scale, and habitats associated with the proposed activities and the limited potential area of impact in open water habitats, and (c) monitoring requirements and mitigation measures designed to limit interactions with, and impacts to, polar bears and walruses. We concluded that only a small proportion of the Pacific walrus population or the Chukchi Sea and Southern Beaufort Sea polar bear populations will likely be impacted by any individual project because: (1) The proportion of walruses and polar bears in the United States portion of the Chukchi Sea region during the open water season when ice is not present is small compared to numbers of walruses and polar bears found outside the region; (2) within the specified geographical region, only small numbers of walruses or polar bears will occur in the open-water habitat where marine Industry activities will occur; (3) within the specified geographical region, the footprint of marine operations is a small percentage of the open water habitat in the region; (4) based on monitoring

information, only a portion of the animals in the vicinity of the industrial activities are likely to be affected and the behavioral responses are expected to be nonlethal, minor, short-term behavioral changes; and (5) the required monitoring requirements and mitigation measures described below will further reduce impacts. Therefore, the number of animals likely to be affected is small, because: (1) A small portion of the Pacific walrus population or the Chukchi Sea and Southern Beaufort Sea polar bear populations will be present in the area of Industry activities, (2) of that portion, a small percentage will come in contact with Industry activities, and (3) the response by those animals will likely be minimal changes in behavior.

#### *Negligible Effects*

The Service finds that any incidental take reasonably likely to result from the effects of oil and gas related exploration activities during the period of the rule, in the Chukchi Sea and adjacent western coast of Alaska will have no more than a negligible effect on the rates of recruitment and survival of polar bears and Pacific walruses in the Chukchi Sea Region. In making this finding, we considered the best scientific information available on: (1) The biological and behavioral characteristics of the species, which is expected to limit the amount of interactions between walruses, polar bears, and Industry; (2) the nature of proposed oil and gas industry activities; (3) the potential effects of Industry activities on the species; (4) the documented impacts of Industry activities on the species, where nonlethal, temporary, passive takes of animals occur, taking into consideration cumulative effects; (5) potential impacts of declining sea ice due to climate change, where both walruses and polar bears can potentially be redistributed to locations outside the areas of Industry activity due to their fidelity to sea ice; (6) mitigation measures that will minimize Industry impacts through adaptive management; and (7) other data provided by monitoring programs in the Beaufort Sea (1993–2006) and historically in the Chukchi Sea (1991–1996).

Our finding of “negligible impact” applies to non-lethal incidental take associated with proposed oil and gas exploration activities as mitigated through the regulatory process. The regulations establish monitoring and reporting requirements to evaluate the potential impacts of authorized activities, as well as mitigation measures designed to minimize

interactions with and impacts to walrus and polar bears. We will evaluate each request for an LOA based on the specific activity and the specific geographic location where the proposed activities will occur to ensure that the level of activity and potential take is consistent with our finding of negligible impact. Depending on the results of the evaluation, we may grant the authorization, add further operating restrictions, or deny the authorization. For example, restrictions in potential denning areas will be applied on a case-by-case basis after assessing each LOA request and could require pre-activity surveys (e.g., aerial surveys, FLIR surveys, and/or polar bear scent-trained dogs) to determine the presence or absence of denning activity and, in known denning areas, may require enhanced monitoring or flight restrictions, such as minimum flight elevations. Monitoring requirements and operating restrictions associated with offshore drilling operations will include requirements for ice-scouting, surveys for walrus and polar bears in the vicinity of active drilling operations, requirements for marine mammal observers onboard drill ships and ice breakers, and operational restrictions near polar bear and walrus aggregations.

#### *Impact on Subsistence Take*

Based on the best scientific information available and the results of harvest data, including affected villages, the number of animals harvested, the season of the harvests, and the location of hunting areas, we find that the effects of the proposed exploration activities in the Chukchi Sea region would not have an unmitigable adverse impact on the availability of walrus and polar bears for taking for subsistence uses during the period of the rule. In making this finding, we considered the following: (1) Historical data regarding the timing and location of harvests; (2) effectiveness of mitigation measures stipulated by Service regulations for obtaining an LOA at 50 CFR 18.118, which includes requirements for community consultations and POCs, as appropriate, between the applicants and affected Native communities; (3) MMS-issued operational permits; and (4) anticipated 5-year effects of Industry proposed activities on subsistence hunting.

Applicants must use methods and conduct activities identified in their LOAs in a manner that minimizes to the greatest extent practicable adverse impacts on Pacific walrus and polar bears, their habitat, and on the availability of these marine mammals for subsistence uses. Prior to receipt of

an LOA, applicants will be required to consult with the Eskimo Walrus Commission, the Alaska Nanuq Commission, and the communities of Point Hope, Point Lay, Wainwright, and Barrow through a POC to discuss potential conflicts with subsistence walrus and polar bear hunting caused by the location, timing, and methods of proposed operations. Documentation of all consultations must be included in LOA applications. Documentation must include meeting minutes, a summary of any concerns identified by community members, and the applicant's responses to identified concerns. If community concerns suggest that the proposed activities could have an adverse impact on the subsistence uses of these species, conflict avoidance issues must be addressed through a POC.

Where prescribed, holders of LOAs will be required to have a POC on file with the Service and on-site. The POC must address how applicants will work with potentially affected Native communities and what actions will be taken to avoid interference with subsistence hunting opportunities for walrus and polar bears. The POC must include:

1. A description of the procedures by which the holder of the LOA will work and consult with potentially affected subsistence hunters.

2. A description of specific measures that have been or will be taken to avoid or minimize interference with subsistence hunting of walrus and polar bears, and to ensure continued availability of the species for subsistence use.

The Service will review the POC to ensure any potential adverse effects on the availability of the animals are minimized. The Service will reject POCs if they do not provide adequate safeguards to ensure that marine mammals will remain available for subsistence use.

If there is evidence during the 5-year period of the regulations that oil and gas activities are affecting the availability of walrus or polar bears for take for subsistence uses, we will reevaluate our findings regarding permissible limits of take and the measures required to ensure continued subsistence hunting opportunities.

#### *Monitoring and Reporting*

The purpose of monitoring requirements is to assess the effects of industrial activities on walrus and polar bears to ensure that take is consistent with that anticipated in the negligible-impact and subsistence use analyses, and to detect any unanticipated effects on the species.

Holders of LOAs will be required to have an approved, site-specific marine mammal monitoring and mitigation plan on file with the Service and on site. Marine mammal monitoring and mitigation plans must be designed to enumerate the number of walrus and polar bears encountered during authorized activities, estimate the number of incidental takes that occurred during authorized activities, and evaluate the effectiveness of prescribed mitigation measures.

Monitoring activities are summarized and reported in a formal report each year. The applicant must submit an annual monitoring and reporting plan at least 90 days prior to the initiation of a proposed activity, and the applicant must submit a final monitoring report to us no later than 90 days after the completion of the activity. We base each year's monitoring objective on the previous year's monitoring results.

We require an approved plan for monitoring and reporting the effects of oil and gas industry exploration activities on walrus and polar bears prior to issuance of an LOA. We require approval of the monitoring results for continued authorization under the LOA.

#### **Discussion of Comments on the Proposed Rule**

The proposed rule, which was published in the **Federal Register** (72 FR 30670) on June 1, 2007, included a request for public comments. The closing date for the comment period was June 30, 2007. We received 4,360 comments.

We received numerous comments regarding the Incidental Harassment Authorization (IHA) process. Those comments are beyond the scope of this rule and consequently are not addressed in this rule. However, we reviewed and considered the comments submitted as a part of the IHA process. Prior to issuance of any IHAs, we concluded that no additional changes were necessary in our finding that the impacts of seismic exploration conducted during the 2007 Chukchi Sea open-water were negligible and would not have unmitigable adverse impacts on the availability of the species or stock for taking for subsistence uses. With respect to this rule, the following issues were raised:

##### **1. MMPA and NEPA**

*Comment:* The Service should conduct a more thorough analysis that explicitly considers the: (1) Direct effects on walrus and polar bear populations; (2) potential or likely effects of other oil and gas activities, climate change, and other human-



induced factors; and (3) cumulative effects of all of these activities over time.

*Response:* The Service has analyzed oil and gas exploratory activities taking into account risk factors to polar bears and walrus such as potential habitat loss, harassment, lethal take, oil spills, contaminants, and effects on prey species that are directly related to Industry within the geographic region. The Service analysis of oil and gas activities for this rulemaking encapsulates all of the known oil and gas industry's activities that will occur in the geographic region during the 5-year regulation period. If additional activities are proposed that were not included in the Industry petition or otherwise known at this time, the Service will evaluate the potential impacts associated with those projects to determine whether a given project lies within the scope of the analysis for these regulations.

The Service agrees that climate change is a likely factor in the decline of sea ice, which is a threat to the polar bear. Sea ice decline also has the potential to impact walrus populations. We addressed this issue for polar bears in the decision to list the polar bear as threatened under the ESA (73 FR 28212; May 15, 2008). We expanded our analysis in the final rule to include more detail on the decline of sea ice associated with climate change and other factors. We have concluded that the activities proposed by Industry and addressed in this rule will have limited impact on the survival of the species.

Recent trends in the Chukchi Sea have resulted in seasonal sea-ice retreat off the continental shelf and over deep Arctic Ocean waters, presenting significant adaptive challenges to walrus in the region. Reasonably foreseeable impacts to walrus as a result of diminishing sea ice cover include: Shifts in range and abundance; increased reliance on coastal haulouts; and increased mortality associated with predation and disturbances at coastal haulouts. Secondary effects on animal health and condition resulting from reductions in suitable foraging habitat may also influence survivorship and productivity. Future studies investigating walrus distributions, population status and trends, and habitat use patterns in the Chukchi Sea are important for responding to walrus conservation and management issues associated with environmental and habitat changes.

The Service is currently involved in the collection of baseline data to help us understand how the changing Arctic environment will be manifested in polar

bear and walrus stocks in Alaska. As we gain a better understanding of climate change and effects on these resources, we will incorporate the information in future actions. Ongoing studies include those led by the USGS Alaska Science Center, in cooperation with the Service, to examine polar bear habitat use, reproduction, and survival relative to a changing sea-ice environment. Specific objectives of the project include: Polar bear habitat availability and quality influenced by ongoing climate changes and the response by polar bears; the effects of polar bear responses to climate-induced changes to the sea-ice environment on body condition of adults, numbers and sizes of offspring, survival of offspring to weaning (recruitment); and population age structure. The Service and USGS are also conducting multi-year studies of the walrus population to estimate population size and investigate habitat use patterns.

Our analysis does consider cumulative effects of oil and gas activities described in Industry's petition. These occur in the area over the 5-year time period covered by these regulations. Cumulative impacts of oil and gas activities have been assessed, in part, through the information we have gained in prior Industry monitoring reports from the Beaufort Sea, which are required for each operator under the authorizations. Information from these reports provides a history of past Industry effects and trends on walrus and polar bears from interactions with oil and gas activities. In addition, information used in our cumulative effects assessment includes research publications and data, traditional knowledge of polar bear and walrus habitat use in the area, anecdotal observations, and professional judgment.

Monitoring results indicate little short-term impact on polar bears or Pacific walrus, given these types of activities. We evaluated the sum total of both subtle and acute impacts likely to occur from industrial activity and, using this information, we determined that all direct and indirect effects, including cumulative effects, of industrial activities during the 5-year regulatory period would not adversely affect the species through effects on rates of recruitment or survival. Based on past information, the level of interaction between Industry and polar bears and Pacific walrus has been minimal. Additional information, such as subsistence harvest levels and incidental observations of polar bears near shore, provide evidence that these

populations have not been adversely affected by oil and gas activities.

*Comment:* The environmental assessment (EA) provides little analysis of secondary or cumulative impacts of past, present, and reasonably foreseeable actions on walrus and polar bear populations. Consequently, there is no basis for concluding a negligible impact for walrus and polar bear, nor a conclusion that there will be no unmitigable adverse impact on subsistence use.

*Response:* Cumulative impacts have been analyzed in the context of making a finding that the total takings during the 5-year period of the rule will have a negligible impact on Pacific walrus and polar bears and will not have an unmitigable adverse impact on the availability of walrus and polar bears for subsistence uses. The Service further concluded that any potential impacts to polar bears and walrus as a result of the proposed Industry activities will be minimized with regulations in place because the Service will have increased ability to work directly with the Industry operators through implementation of monitoring and mitigation measures. It is important to note that the incidental take regulations are not valid for an indefinite length of time. They expire in 5 years. Consequently, our analyses are limited to anticipated impacts of all known activities that will occur in the geographic region during the 5-year regulation period. It should also be noted that the Service can withdraw or suspend the regulations at any time during the 5-year period if the Service concludes that new information or events create more than a negligible impact on polar bear or walrus populations or an unmitigable adverse impact on subsistence use. We have revised the EA to further clarify these points.

*Comment:* The Service violates NEPA by failing to prepare a full EIS for the proposed regulations and take authorizations. Under NEPA, an EIS must be prepared if "substantial questions are raised as to whether a project may cause significant degradation of some human environmental factor."

*Response:* Section 1501.4(b) of NEPA, found at 40 CFR Chapter V, notes that, in determining whether to prepare an EIS, a Federal agency may prepare an EA and, based on the EA document, make a determination whether to prepare an EIS. The Department of the Interior's policy and procedures for compliance with NEPA (69 FR 10866) further affirm that the purpose of an EA is to allow the responsible official to

determine whether to prepare an EIS or a "Finding of No Significant Impact" (FONSI). The Service analyzed the proposed activity, i.e., issuance of implementing regulations, in accordance with the criteria of NEPA and made an initial determination that it does not constitute a major Federal action significantly affecting the quality of the human environment. Potential impacts of these regulations on the species and the environment were analyzed in the EA rather than the potential impacts of the oil and gas activities. There appeared to be some confusion between the potential impacts of these regulations and the potential impacts of the activities themselves. It should be noted that the Service does not authorize the actual Industry activities. Those activities are authorized by other State and Federal agencies, and could likely occur even without incidental take authority. These regulations provide the Service with a means of interacting with Industry to insure that the impacts to polar bears and Pacific walruses are minimized. Furthermore, the analysis in the EA found that the proposed activity would have a negligible impact on polar bears and Pacific walruses and would not have an unmitigable adverse impact on subsistence users, thereby resulting in a FONSI. Therefore, in accordance with NEPA, an EIS is not required.

*Comment:* The EA is a deficient NEPA document because: (1) The Service needs to conduct more thorough analysis of various alternatives, not just the issuance of the 5-year take regulations and the no-action alternative; (2) the Service has failed to identify unique habitats, including national wildlife refuge lands, sensitive onshore areas, and private lands; (3) the EA is not formatted correctly; and (4) the EA fails to address the likely and potential impacts of oil spills on polar bears and walrus.

*Response:* Section 102(2)(E) of NEPA requires a Federal agency to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." In addition to the action and no action alternatives, the Service considered other possible alternatives, but determined these were neither appropriate nor feasible. These included (1) Separating Industry operations by the type of activity; (2) separating Industry operations by the location of activities; (3) separating Industry operations by the timing of the activity; (4) promulgating separate rules for each type of activity; and (5) initiating an

IHA program similar to the NMFS program.

In determining the impact of incidental taking, the Service must evaluate the "total taking" expected from the specified activity in a specific geographic area. The estimate of total taking involved the accumulation of impacts from all anticipated activities to be covered by the specific regulations. Our analysis indicated that separating Industry operations by various means was not a viable alternative, as we cannot separate or exempt specific activities in order to make a negligible finding. In addition, during the 2006 and 2007 open-water seasons, the Service authorized IHAs for oil and gas development activities in the Chukchi Sea as a means to establish temporary incidental take authorization for a limited number of projects occurring in the area. This was a new process for the Service and, subsequently, the Service concluded that the IHA process did not provide the comprehensive coverage necessary due to the types and numbers of onshore and offshore oil and gas activities that may encounter walruses and polar bears during the next 5 years. Therefore, further analysis of these alternatives was not appropriate.

To reduce paperwork, NEPA regulations at 40 CFR 1500.4(j) encourage agencies to incorporate by reference. In describing the physical environment of the geographic area, the Service EA refers the reader to the Programmatic EA prepared by the MMS. The Service EA describes the specific biological environment of the walrus and the polar bear within the identified geographic area. To the best extent possible we have described sensitive onshore areas for walruses and polar bears in the geographic region within the EA and the regulations.

The Service acknowledges that the geographic region contains a multitude of lands that are managed under various owners; however, the use of unique lands will be dictated by those regulatory agencies with authority to permit the Industry activities. Once an Industry project has been permitted by the responsible agency, the Service will evaluate the project in regard to polar bears and walruses through a requested incidental take authorization, i.e., the LOA process provided by these regulations.

Although NEPA outlines a format for writing an EIS, no formal format is required for EAs. NEPA regulations at 40 CFR 1508.9 state that an EA shall include a brief discussion of the need for the proposal, alternatives as required by section 102(2)(E), the environment impacts of the proposed action and the

alternatives, and a listing of agencies and persons consulted. The Service EA prepared for the promulgation of these incidental take regulations provides a discussion for each of these items. The DOI policy and procedures for compliance with NEPA (69 FR 10866) further states that an EA may be "prepared in any format useful to facilitate planning, decision-making, and appropriate public participation." The EA, as prepared by the Service, serves these purposes and complies with all NEPA requirements.

The potential of oil spills, both large and small, is discussed under section 3.4 of the EA for both Pacific walruses and polar bears in their subsections under this section. The EA further contains a discussion of potential impacts to prey species of both walruses and polar bears. The information presented in these sections of the EA was considered in the Service findings for these regulations.

*Comment:* Certain geophysical survey operations, such as aeromagnetic surveys, were not analyzed in the proposed rule or the EA.

*Response:* All activities described within Industry's petitions were analyzed for these regulations. Those activities thought to have the potential to impact walruses or polar bears will be prescribed additional mitigation measures.

*Comment:* Environmental consequences of the activities of the various foreign-flagged vessels scheduled to participate in the proposed activities were ignored. The Service cannot authorize take in the Alaskan Chukchi Sea while ignoring related take that will occur elsewhere in the high seas.

*Response:* This suggestion goes beyond the scope of this rule and beyond the petitioner's request. The regulations identify the geographic area covered by this request as the continental shelf of the Arctic Ocean adjacent to western Alaska, including the waters (State of Alaska and OCS waters) and seabed of the Chukchi Sea, as well as the terrestrial coastal land 25 miles inland between the western boundary of the south National Petroleum Reserve—Alaska (NPR—A) near Icy Cape and the north-south line from Point Barrow (72 FR 30672). This identified geographical region is the subject area for these regulations, and we concluded that these boundaries are appropriate for analyzing the potential effects of the described oil and gas activities on polar bears and Pacific walruses occurring within the Chukchi Sea.

*Comment:* The areas described are too large to be defined as a “specified geographical region,” and it is unlawful to do so.

*Response:* Congress did not define “specified geographical region” when the MMPA was amended in 1981 to authorize the Secretary to allow the taking of marine mammals incidental to specified activities other than commercial fishing operations. Therefore, the Service provided a definition in the regulations at 50 CFR 18.27, which states “*specified geographical region* means an area within which a specified activity is conducted and which has similar biogeographic characteristics.” Although the use of such a broad definition has come into question, it has yet to be further defined. Instead, the agencies are given the latitude to determine what makes up the specific geographic region for the specific action being considered. The Service believes that the Chukchi Sea lease sale area as provided in the preamble of the proposed rule meets the definition of specified geographic region as currently defined and interpreted by the Service.

*Comment:* The Service cannot claim the lack of available information on the status of walrus and polar bear justifies its decisions, as determined in *Brower v. Evans*, 257 F.3d 1058, 1071 (9th Cir. 2001).

*Response:* In *Brower v. Evans*, the Court found that the NMFS, when adopting a regulation to ease the dolphin-safe labeling standard for tuna, had erred by: (1) engaging in rulemaking before conducting studies on dolphin that had been mandated by Congress as a prerequisite to the decision-making process; and (2) failing to consider the best available scientific evidence, which contradicted the agency’s conclusion that tuna caught in purse seines could be labeled as “dolphin safe.” 257 F.3d 1058, 1068–71 (9th Cir. 2001). The Court also indicated that the agency could not use insufficient evidence as a reason for ignoring a statutory mandate to determine whether or not the use of the nets was impacting dolphin stocks. *Id.* at 1071.

None of these situations apply here. The applicable statutory mandate is Section 101(a)(5)(A) of the MMPA, which allows for incidental, but not intentional, take of small numbers of marine mammals, provided that the total take will have a negligible impact on the population, and will not affect the availability of the species for subsistence uses. The Service put significant effort into insuring that it was using the best available scientific evidence before making affirmative

determinations that the incidental take under this rule will have a negligible impact on polar bear and walrus populations in the Chukchi Sea and that it will not affect subsistence uses. In addition, the mitigation measures required under the rule further reduce the potential for negative impacts on population or subsistence. Although the Service is actively engaged in ongoing studies on climate change, polar bears, and walrus in the Arctic, none of these studies have been mandated by Congress as a prerequisite to this rulemaking.

*Comment:* The Service cannot lawfully authorize some take (i.e., harassment) if other unauthorized take (i.e., serious injury or mortality) may also occur, as determined in *Kokechik Fishermen’s Association v. Secretary of Commerce*, 839 F.2d 795, 801–02 (D.C. Cir. 1988).

*Response:* We are not anticipating that any unauthorized takes, such as serious injury or mortality, will result from the implementation of this rule.

*Comment:* The regulations would allow for unlimited harassment of polar bears and Pacific walrus by oil companies in the Chukchi Sea.

*Response:* We disagree. Authorized activities are limited by the operating restrictions set forth in this rule. Section 101(a)(5)(A) of the MMPA provides for the incidental, but not intentional take of small numbers of marine mammals, provided that the total take will have a negligible impact on the population, and will not affect the availability of the species for subsistence users. The Service believes that potential adverse effects to walrus, polar bears, and the subsistence use of these resources can be greatly reduced through the operating restrictions, monitoring programs, and adaptive management responses set forth in this rule.

*Comment:* We should be permanently protecting the Chukchi Sea, not opening it up to oil leasing.

*Response:* This comment is outside the scope of the analysis for the 5-year incidental take regulations. The MMPA allows for the Secretary to authorize the incidental taking of marine mammals during the course of a specified activity conducted in a specified geographical region upon making certain findings; however, authorization to conduct the activity, in this case oil and gas exploration, falls under the agency responsible for permitting that activity, in this case, the MMS.

*Comment:* Proposed regulations give a blank check to the oil and gas industry to operate in these species’ most sensitive habitats.

*Response:* We disagree. Section 101(a)(5)(A) of the MMPA provides a mechanism for the Secretary to authorize the incidental, but not intentional taking of marine mammals by citizens of the United States while engaged in a specified activity within a specified geographical region, provided that the Secretary finds the total expected incidental taking will have a negligible impact on the species and will not have an unmitigable adverse impact on the availability of such species for subsistence purposes. Such findings have been made based on the best available information.

The Secretary then prescribes regulations that set forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species, its habitat, and its availability for subsistence purposes. Further, the Secretary sets forth monitoring and reporting requirements, which allow the Service to measure and assess impacts and their potential effect on the species or subsistence use. The reported monitoring information allows the Service to adjust future actions to better manage industry activities and further limit potential impacts on Service trust species. These regulations emulate the intent of the MMPA by providing a process whereby stipulations will be imposed on industry through issuance of the LOAs to ensure that potential impacts to polar bear and walrus remain negligible and mitigable. For example, should polar bears be encountered during industry activities, the LOA outlines the appropriate measures that must be followed to safeguard the lives of both humans and bears and, thereby, minimize adverse impacts.

In addition, Section 101(5)(B) authorizes the Secretary to withdraw or suspend an authorization if the method of taking, monitoring, or reporting is not being complied with, or if the take allowed under the regulations is having, or may have, more than a negligible impact on the species or stock of concern. Again, the monitoring and reporting requirements provide the instrument for the Secretary to make such a determination.

## 2. Specificity of Action

*Comment:* The Service does not adequately specify the locations, activities, and mitigation measures to be covered by the take authorization. Deferring specific project descriptions until a later date is inappropriate and a violation of the MMPA and NEPA. Such speculation makes it impossible to do a NEPA analysis.

*Response:* We disagree. The intent of these regulations is to provide petitioners an overall “umbrella” set of guidelines which, when followed, allow certain oil and gas exploration activities to proceed after the Service has assessed whether such activities will potentially have an unmitigable impact on subsistence use or more than a negligible impact on polar bears and walrus. To that end, the Service described the geographic region where the proposed activities would occur, the four types of activities to be authorized, the projected scale of each activity, and the anticipated impacts that could occur in the specified time period of 2007 through 2012. The regulations acknowledge that in the planning phases, most projects contain some element of uncertainty. Consequently, in addition to requiring certain mitigation measures common to all projects, a separate LOA will be required for each specific survey, seismic, or drilling activity. This allows each specific LOA request to be evaluated for additional mitigation methods over and above those required in the umbrella guidelines. The regulations specify those mitigation measures that will be required for all oil and gas activities and those that may be required, depending on the type or location of the activity; for these, the regulations describe under what conditions that type of mitigation measure will be required.

This type of authorization process, i.e., provision of a general regulatory framework for certain activities with a secondary process authorizing specific individual projects under the framework, is not uncommon in NEPA analyses. Examples include: the COE Nationwide Permit Program, which authorizes over 40 different types of general projects across the nation; various COE general permits for various activities in all States; and programmatic EAs and EISs completed by various agencies for authorizing certain types of work on Federal lands, and other examples. If the framework provides enough information so that generalized project descriptions, locations, alternatives, and methods to avoid, minimize, and mitigate potential adverse impacts can be meaningfully addressed, the analyses can proceed. Similar to what is being proposed here, most general permits or authorizations include a caveat that specific project plans must be submitted prior to conducting work and, at that time, more specific stipulations may be required.

*Comment:* The proposed regulations require MMOs to report the latitude and longitude of walrus or polar bear

observations. In most instances, this information is proprietary, and a confidentiality agreement would be needed. In addition, even with a signed confidentiality agreement, many clients may not release this information until after the conclusion of the lease sale.

*Response:* We understand this concern and have provided clarification that the latitude and longitude of walrus or polar bear observations from the seismic vessel must be submitted after lease sales have occurred. Lease Sale 193 in the Chukchi Sea region occurred in February 2008, prior to the next anticipated exploration season. Therefore, we do not anticipate any further location-specific proprietary issues and will expect full and complete reporting of project locations.

*Comment:* The **Federal Register** notice and documents cited therein are inconsistent. The activities being proposed by Industry differ from the activities being authorized by the Service—multiple petitions and addendums from Industry appear inconsistent.

*Response:* While we acknowledge that requests contained in the petitions and addendums may not correspond exactly with the specified activities described in the Service’s **Federal Register** notice, the notice as written correctly describes the scope of work that was analyzed and would be authorized by this action. In addition, activities conducted in the Beaufort Sea portion of the North Slope are authorized under regulations previously analyzed and published on August 2, 2006 (71 FR 43926), for that specified geographic area.

### 3. Mitigation

*Comment:* Final rulemaking should be deferred until the Service has specifically identified the mitigation measures that would be applied through the LOA process so that the public is given the opportunity to evaluate the efficacy of those measures.

*Response:* The Service has disclosed a suite of mitigation measures that will be used to mitigate incidental take of polar bears and walrus. The Service believes that the mitigation and monitoring measures identified in the rule encompass the overall suite of measures that will be necessary to ensure negligible impact on polar bears and walrus and to ensure that the activities will not have an unmitigable adverse impact on the availability of these species for subsistence uses. When a request for an LOA is made, the Service will determine which of the mitigation and monitoring measures will be necessary for the particular activity based on the details provided in

the request. Through the LOA process the Service will examine the siting and timing of specific activities to determine the potential interactions with, and impacts to, polar bears and walrus and will use this information to prescribe the appropriate mitigation measures to ensure the least practicable impact on polar bears and walrus and subsistence use of these species. In addition, the Service will review monitoring results to examine the responses of polar bears and walrus to various exploration activities and adjust mitigation measures as necessary. We will also consider adjusting monitoring methodologies and mitigation measures as new technologies become available and practical.

*Comment:* The vessel and aircraft exclusion zones for walrus and polar bears on ice or land are inadequate mitigation measures to protect animals from disturbances. It was also noted that animals in the water are not afforded the same protection and that these measures would not afford protection to denning polar bears.

*Response:* The protective measures placed around walrus on land or ice are intended to prevent mortality and level A harassment (potential to injure) resulting from panic responses and intra-specific trauma (e.g., trampling injuries by large groups of animals). These standards are based upon the best available information concerning walrus and polar bear flight responses to vessels and aircrafts and are consistent with current guidelines in other parts of Alaska. The potential for intra-specific trauma is greatly reduced when animals are encountered in the water. Although these mitigation measures are also expected to help reduce incidences of level B (potential to disturb) harassment, they are not intended to completely eliminate the possibility of disturbances. Required monitoring during operations is expected to contribute data regarding flight responses, which will be used to evaluate the efficacy of these buffer areas in future impact assessments. Monitoring and mitigation measures to be specified through the LOA process for activities occurring in potential polar bear habitat include surveys for active polar dens and the establishment of 1-mile buffer areas around known or suspected dens. This is an established conservative distance that the Service has implemented with success in the Beaufort Sea to limit the potential for disturbance to denning polar bears.

*Comment:* The Service concludes that site-specific monitoring programs are “expected to reduce the potential effects of exploration activities on walrus,

polar bears, and the subsistence use of these resources.” (72 FR 30675; June 1, 2007). Monitoring is not mitigation—documenting the impacts of industrial activities on polar bears and walrus is not the same as minimizing the effects of such activities.

*Response:* The commenter is correct that site-specific monitoring alone does not necessarily mitigate potential adverse impacts. However, real-time monitoring does provide a basis for adaptive mitigation responses. For example, seismic vessels will be required to staff trained marine mammal observers who have the authority to modify or stop seismic operations under specified circumstances. Clarifying language has been added to the final rule indicating that site-specific monitoring programs are expected to provide the basis for initiating adaptive mitigation measures to reduce potential effects of exploration activities on walruses, polar bears, and subsistence use of these resources.

*Comment:* The Service does not impose legally required mitigation measures necessary to achieve the MMPA’s statutory mandates.

*Response:* The Service has required mitigation measures that will be imposed on Industry activities. These can be found at Section 18.118 of this rule. These mitigation measures will be effective in addressing the commenters concerns.

*Comment:* The Service’s mitigation and monitoring procedures should follow NMFS’ previously authorized IHAs for marine mammals in the Chukchi Sea.

*Response:* We coordinate closely with NMFS and strive to standardize monitoring programs and mitigation measures as much as possible. However, some of the necessary mitigation measures are species-specific (e.g., walruses aggregate in large groups and polar bears use the terrestrial environment) and require distinctive and, sometimes, innovative ways to mitigate impacts specific to the needs and behaviors of that species.

*Comment:* The MMPA explicitly requires that the prescribed regulations include other “means of effecting the least practicable adverse impact” on a species, stock, or habitat. Regulations must explain why measures that would reduce the impact on a species were not chosen (i.e., why they were not “practicable”).

*Response:* Although the MMPA does provide a mechanism for the Secretary to prescribe regulations that include “other means of effecting the least practicable adverse impact” on a species, stock, and its habitat, the

regulations do not require the Secretary to provide an explanation for measures that were determined to be impracticable. In fact, all measures that are practicable and would provide a means to minimize adverse impacts to the species as a result of the proposed activities should be included in the prescribed regulations. The Service believes it has included a full suite of means to minimize impacts to Pacific walruses and polar bears that could result from oil and gas exploration activities. As mentioned above, the regulations describe which mitigation measures are always required for certain activities and which can be selectively used to mitigate level B harassment of polar bears and walruses. There is a certain amount of uncertainty within each proposed activity. The Service adaptively manages projects case-by-case because certain mitigation measures may not be appropriate in every situation. This adaptability allows us to implement “means of effecting the least practicable impact.”

*Comment:* The Service should require that monitoring reports and information be submitted in the format of GIS data layers and computerized data that can easily be linked to geographic features.

*Response:* The Service will consider this recommendation. Currently we are working with Industry to improve the collection and management of monitoring information and data as it becomes available from the operators. Depending on the type of monitoring information requested, GIS applications are a form of data reporting that is being considered.

*Comment:* The Service requirement to conduct aerial surveys in the Chukchi introduces too great a safety risk to workers. This should not be required. There are other monitoring techniques that can be just as effective.

*Response:* Holders of an LOA are required to monitor the potential impacts of their activities on walruses and polar bears and subsistence use of these resources. The responsibility of designing and implementing programs to achieve these monitoring objectives lies with the applicant seeking the exemption from the MMPA. The Service is willing to consider any monitoring protocols and methods that meet monitoring objectives.

*Comment:* Use of scent-trained dog surveys has not been adequately tested, and caution should be used in any statement about this technique. It is still in the ‘test phase’ and it should be referenced as such.

*Response:* Although the use of scent-trained dogs to locate polar bear dens on the North Slope of Alaska is a recent

development (2002), it has proven to be an effective mitigation tool that allows the Service to locate maternal dens with accuracy and limited disturbance. The technique of using scent-trained dogs to detect ringed seals and their lairs has been employed since the 1970s. This is an example of adaptive mitigation, where the Service uses other technologies and adapts them so they can be used to help limit the disturbance by Industry on Service trust species.

*Comment:* All practicable monitoring measures should be included to afford walrus and polar bear protection from sources of disturbance. Operations should be suspended if dead or injured walrus or polar bear are found, where any suspension should be in place until the Service has reviewed the situation to determine where further mortalities would occur.

*Response:* The Service believes that all practicable monitoring measures have been analyzed and incorporated into the monitoring programs. If additional techniques become available and are appropriate to gather information that allows the Service to assess impacts of Industry on walruses and polar bears, the Service will incorporate them into the monitoring program.

Past operating procedures allow the Service the flexibility of requiring a suspension of operation if animals are injured or killed as a possible result of Industry operations. This will continue through the duration of these regulations.

*Comment:* In accordance with the Paperwork Reduction Act, were all the reporting requirements identified in the regulations at Section 18.118 of the proposed rule (72 FR 30697–30700; June 1, 2007) subjected to OMB review and approval?

*Response:* Yes, the reporting requirements as outlined in Section 18.118 were included in the Service’s request to OMB for approval under the Paperwork Reduction Act. The Service’s Supporting Statement, which is part of the Information Collection Request, provides estimated burden hours and costs for the collection of this information, i.e., the initial application, requests for LOAs, the Onsite Monitoring and Observation Report, and the Final Monitoring Reports.

#### 4. Biological Information

*Comment:* A broad-based population monitoring and assessment program is needed to ensure these activities, in combination with other risk factors, are not individually or cumulatively having any population-level effects on polar

bear and walrus, or adversely affecting the availability of the animals for subsistence purposes.

*Response:* The Service agrees with this comment, in part. One basic purpose of monitoring polar bears and walruses in association with Industry is to establish baseline information on habitat use and encounters and to detect any unforeseen effects of Industry activities. We agree that a broad-based, long-term monitoring program is useful to refine our understanding of the impacts of oil and gas activities on polar bears, walruses, and their habitat over time, and to detect and measure changes in the status of the overall polar bear and walrus populations in the Chukchi Sea. However, a broad-based population monitoring plan as described by the commenter would need to incorporate research elements as well. When making our findings, the Service uses the best and most current information regarding polar bears and walruses. The integration of, and improvement in, research and monitoring programs are useful to assess potential effects to rates of recruitment and survival and the population parameters linked to assessing population-level impacts from oil and gas development.

Where information gaps are identified, the Service will work to address them. Monitoring and reporting results specified through the LOA process during authorized exploration activities are expected to contribute information concerning walrus and polar bear distributions and habitat use patterns within the Chukchi Sea Lease sale area. The Service is also in the process of analyzing the results of a joint U.S./Russia walrus population survey carried out in 2006, and is sponsoring research investigating the distribution and habitat use patterns of Pacific walruses in the Chukchi Sea. This information will be incorporated into the decision-making process and into subsequent NEPA analyses as it becomes available.

However, it should be noted that the EA analysis followed the Council for Environmental Quality's NEPA guidance regarding assessments where information is limited. The Service used the best information available in making its determination that the impacts from the specified activities will have a negligible impact on the affected species and stocks or subsistence use of these resources. Information from a variety of sources, including peer-reviewed scientific articles, unpublished data, past aerial survey results, harvest monitoring reports, as well as the results of previous oil and gas monitoring studies were considered in the analysis.

Although the present status and trends of polar bear and walrus populations in the Chukchi Sea are poorly known, there is no information available suggesting that previous oil and gas exploration activities in this region resulted in population-level effects on polar bears and walruses, or adversely affected the availability of the animals for subsistence purposes.

Nonetheless, monitoring provisions associated with these types of regulations were never intended as the sole means to determine whether the activities will have a negligible effect on polar bear or walrus populations. There is nothing in the MMPA that indicates that Industry is wholly responsible for conducting general population research. Thus, we have not required Industry to conduct such population research and instead require monitoring of the observed effect of the activity on polar bear and walrus. We are constantly accumulating information, such as reviewing elements of existing and future research and monitoring plans that will improve our ability to detect and measure changes in the polar bear and walrus populations. We further acknowledge that additional or complimentary research, studies, and information, collected in a timely fashion, is useful to better evaluate the effects of oil and gas activities on polar bears and walruses in the future.

*Comment:* There is conflicting information in different sections of the **Federal Register** notice describing "ramp-up" procedures.

*Response:* The Service has made the appropriate modifications to this document.

*Comment:* The Service should analyze the impacts of non-native species introductions and require measures such as ballast water management to prevent such introductions.

*Response:* Although ballast water management is a valid conservation concern in the nation's waters, this issue is beyond the scope of our analyses. The USCG has published regulations at 33 CFR Part 151, Subpart D (Ballast Water Management for Control of Non-indigenous Species in Waters of the United States), establishing a national mandatory ballast water management program for all vessels equipped with ballast water tanks that enter or operate within U.S. waters. These regulations require vessels to maintain a ballast water management plan that is specific for that vessel and assigns responsibility to the master or appropriate official to understand and execute the ballast water management strategy for that vessel.

*Comment:* One commenter suggested that the Service's failure to consider several studies demonstrating a threat of serious injury and mortality to marine mammals from seismic surveys rendered its determination that serious injury or mortality will not occur from the proposed seismic surveys and other exploration activities arbitrary and capricious.

*Response:* We reviewed the references cited by the commenter and found that they provide no additional information concerning potential impacts of seismic surveys on walruses or polar bears.

Although the underwater hearing characteristics of polar bears and walruses are poorly known, the Service has no reason to believe that either species are more prone to acoustical injury than other marine mammals. In the absence of specific data on polar bears and walruses, the Service has adopted monitoring and mitigation standards established for other marine mammal species. These standards are inherently conservative, as they are based upon theoretical thresholds for temporary hearing loss, a non-injurious (Level B harassment) level.

Additionally, monitoring and reporting conditions specified in the regulations call for the cessation of activity in the unlikely event that an injury occurs. Activity would not be allowed to commence until the cause of the injury/mortality could be determined. The Service believes that the mitigation measures for seismic surveys identified in the regulations are adequate for mitigation against the potential for serious injury and mortality.

*Comment:* The Service cannot meaningfully assess the number of walruses likely to be impacted, consequently it is not possible to conclude that only "small numbers" will be taken, therefore any "small numbers" conclusion is arbitrary and capricious.

*Response:* There is no recent, reliable census information for either walruses or polar bears in the Chukchi Sea region. Furthermore, the distribution and abundance of walruses and polar bears in the specified geographical region considered in these regulations is expected to fluctuate dramatically on a seasonal and annual basis in response to dynamic ice conditions. Consequently, it is not practical to provide *a priori* numerical estimates of the number of walruses or polar bears that might occur within the specified geographical region in any given year, or to quantify with any statistical reliability the number of animals that could potentially be exposed to industrial noise during this time frame. Nevertheless, based on other

factors, we are able to deduce with a high degree of confidence that only small numbers of Pacific walruses and polar bears are likely to be impacted by the proposed activities. The factors considered in this finding are detailed in the "Summary of Take Estimates for Pacific Walruses and Polar Bears."

*Comment:* Each seismic survey would take approximately 3,000 walrus. With up to four seismic survey vessels operating simultaneously in the Chukchi Sea region in any given year, as many as 12,000 walrus takes could occur each year, with a total of 60,000 walrus taken over the 5-year duration of the regulations.

The Service believes that the estimated "takes" presented by the commenter are based upon an overly simplistic model (line miles of survey effort with a calculated zone of influence distributed across a habitat characterized by a theoretical, uniform animal density) that over estimates the number of walruses potentially exposed to seismic noise by the described activities. While certain aspects of this model might be considered reasonable for a seismic survey that transected a long, linear distance, the specified surveys are expected to occur within relatively small areas, transiting back and forth across a region of interest. Because of the overlapping zone of influence, the amount of potential walrus habitat ensnared (and number of walruses potentially exposed to seismic noise) during any given survey will be far less than presented by the calculation. The Service also believes that it is not appropriate to estimate the number of potential exposures based upon a standard uniform theoretical density as presented. Based upon the results of previous survey efforts, it is clear that walruses are not distributed uniformly across the Chukchi Sea. It is likely that walruses will be absent, or at least widely distributed during the exploration season at the locations of interest. The commenter failed to consider any of the site-specific monitoring requirements or adaptive mitigation measures identified in the **Federal Register** notice that are expected to greatly reduce the chances of activities occurring in areas of high walrus concentrations. The Service also considered the likelihood that not all potential exposures would translate into "takes" and that any anticipated "take" would be limited merely to temporary shifts in animal behavior in making our determination.

*Comment:* The **Federal Register** notice concludes that anticipated "takes" will be limited to nonlethal

disturbances, affecting a relatively small number of animals and that most disturbances will be relatively short-term in duration. The MMPA only allows take affecting "small numbers" of marine mammals, not "relatively small numbers."

*Response:* The Service's analysis of "small numbers" complies with the agency's regulatory definition and is an appropriate reflection of Congress' intent. As we noted during the development of this definition (48 FR 31220; July 7, 1983), Congress itself recognized the "imprecision of the term 'small numbers,' but was unable to offer a more precise formulation because the concept is not capable of being expressed in absolute numerical limits." See H.R. Report No. 97-228 at 19. Thus, Congress focused on the anticipated effects of the activity on the species and that authorization should be available to persons "whose taking of marine mammals is infrequent, unavoidable, or accidental." *Id.*

The Chukchi Sea lease sale area extends over 1.9 million square kilometers of potential walrus and polar bear habitat. The typical seismic survey project is expected to sample less than 2 percent of this area and, because of difficulties associated with operating in and near pack ice, survey vessels will be operating in habitats where walrus and polar bear densities are expected to be extremely low. Based upon previous survey efforts in the region, the expected extent of ice during the proposed activities, behavior and movement trends of Pacific walruses and polar bears, we expect industry operations will only interact with small numbers of these animals in open water habitats. Of course, some of the proposed exploratory activities will occur on land as well. However, we have reviewed the proposed activities, both on land and at sea, and the results of previous monitoring studies in light of the existing and proposed mitigation measures. This review leads us to conclude that, while some incidental take of walruses and polar bears is reasonably expected to occur, these takes will be limited to non-lethal disturbances, affecting a small number of animals, and that most disturbances will be relatively short-term in duration. Furthermore, we do not expect the anticipated level of take from the proposed activities to affect the rates of recruitment or survival of either the Pacific walrus or polar bear populations.

*Comment:* The Service justifies making their "small numbers" and "negligible impacts" conclusion by stating that "[b]ased upon previous seismic monitoring programs, seismic

surveys can be expected to interact with relatively small numbers of walruses swimming in open water." There are multiple problems with this assertion: (1) It assumes that monitoring programs actually detect all walrus impacted by exploration activities; (2) it ignores the high density of walrus in the Chukchi Sea; (3) it ignores the fact that much of the authorized activity will occur in or near ice; (4) it is only about seismic surveys, which are only a subset of the numerous exploration activities; and (5) it ignores the fact that changing ice conditions as a result of global warming are leading to more walrus being observed in open water.

*Response:* Comments related to the Service conclusions regarding "small numbers" have been previously addressed. The commenter correctly points out that marine mammal observers are unlikely to detect all walruses potentially exposed to noise generated by exploration activities. Rather, the observer program is designed as an adaptive measure, which allows operators to quickly respond should a walrus enter a prescribed safety zone.

The commenter suggests that the Service has ignored the high density of walruses in the Chukchi Sea. Both the preamble of the **Federal Register** Notice and the EA acknowledge that the Chukchi Sea is important habitat for a significant proportion of the Pacific walrus population when ice is present. It is important to clarify that walruses are an ice-dependent species and their distribution and abundance in the region is largely influenced by the presence or absence of suitable sea ice habitats. Although the Service acknowledges that walruses can and do range considerable distances from sea ice haulouts during migrations or foraging excursions, the species is not adapted to a pelagic existence, and is not likely to adapt to a pelagic lifestyle in the absence of sea ice as suggested. Furthermore, the suggestion that much of the specified activity will occur in or near sea ice is unfounded. Most of the exploration activities specified in these regulations are expected to occur in open water conditions some distance from the pack-ice. Vessel based seismic surveys, which involve towing hydrophone arrays up to several hundred meters in length, cannot be accomplished in the presence of sea ice. Offshore exploratory drilling operations are expected to occur from drill ships requiring open water conditions. The ice management vessels associated with the drill ships are a necessary safety and environmental precaution against potential, but infrequent, incursions of



sea ice during drilling operations. In the event that icebreaker operations are necessary, they will be subject to additional monitoring and mitigation measures, including but not limited to ice scouting and marine mammal surveys in the vicinity of the drill site. Because most of the offshore activities will occur in open water conditions some distance from the sea ice, we expect them to interact with a relatively small proportion of the Pacific walrus population. In the event that any walrus are present near exploratory operations, whether in open water or on intruding sea ice, boat-based monitoring to mitigate disturbance events will occur. Furthermore, because of the transitory nature of the authorized activities, we do not anticipate that any walrus exposed to these operations will exhibit more than short term behavioral responses.

*Comment:* It is not apparent that the Service has made a separate finding that only “small numbers” of Pacific walrus and polar bears will be affected by the proposed authorizations. This is because there is no apparent numerical estimate of the number of animals that will be taken by any of the petitioners individually or cumulatively during the proposed exploration activities.

*Response:* The Service is confident that only small numbers of walrus and polar bears will be taken by the proposed activities. Although a numerical estimate of the number of Pacific walrus and polar bears that might be taken incidental to specified activities currently could not be practically obtained, the Service deduced that only small numbers of Pacific walrus and polar bears, relative to their populations, have the potential to be impacted by the proposed industry activities described in these regulations. This conclusion was based on the best available scientific information regarding the habitat use patterns of walrus and polar bears and the distribution of walrus and bears relative to where industry activities are expected to occur. In addition to our response, we have further clarified our explanation of small numbers in the regulations (Summary of Take Estimates for Pacific Walrus and Polar Bears).

*Comment:* The Service has conflated the MMPA’s requirement that the number of takings be small and that the takings have a negligible impact on a species or stock.

*Response:* We disagree. The Service’s determination that the takings are of small numbers was analyzed independently of its determination that

those takings would have a negligible impact. Moreover, the Service’s analysis of “small numbers” complies with the agency’s regulatory definition and is an appropriate reflection of Congress’ intent. As we noted during the development of this definition (48 FR 31220; July 7, 1983), Congress itself recognized the “imprecision of the term ‘small numbers,’ but was unable to offer a more precise formulation because the concept is not capable of being expressed in absolute numerical limits.” See H.R. Report No. 97–228 at 19. Thus Congress itself focused on the anticipated effects of the activity on the species and that authorization should be available to persons “whose taking of marine mammals is infrequent, unavoidable, or accidental.” *Id.* The Service’s analysis of negligible impact was based on the distribution and number of the species during proposed activities, its biological characteristics, the nature of the proposed activities, the potential effects, documented impacts, mitigation measures that will be implemented, as well as other data provided by monitoring programs in the Beaufort Sea.

*Comment:* The “small numbers” conclusion doesn’t include impact from oil spills and other direct, indirect and cumulative impacts, and doesn’t account for climate change.

*Response:* We disagree. The final EA addresses cumulative impacts, as did the draft EA within the parameters of the 5-year regulatory time period. The EA identifies reasonably foreseeable oil and gas-related and non-oil and gas-related activities in both Federal and State of Alaska waters. This included oil spill analysis, which reviewed spills from vessel transport, onshore spills, and potential release of oil from exploratory well sites. Implementing NEPA requires analysis of a most likely or reasonably foreseeable scenario when analyzing an issue, such as oil spills, not a worst case scenario. The Service analyzed potential oil spills using data from MMS, the State of Alaska, oil spill contingency plans from industry, along with known information of distribution and movements of polar bears and walrus. The type of spill, amount of oil released, potential locations of spills, their seasonal timing in addition to life history parameters of the Service trust species were incorporated into our analysis. We determined that, while the potential for oil spills to occur exists, they will have a negligible impact on polar bears and walrus, considering the likelihood of these events occurring. Other appropriate factors, such as climate change (addressed throughout the comments), military activities, and

noise contributions from community and commercial activities were also considered.

#### 5. Subsistence

*Comment:* The Service conclusion that there will be no unmitigatable adverse impacts on polar bear and walrus availability for subsistence uses is not supported.

*Response:* We disagree. In our analysis of the potential impacts of the specified activities on subsistence use of polar bears and walrus we considered: (1) The implementation of exclusion zones around established hunting areas, such as the twenty-five-mile coastal deferral zone and the 40-mile seismic exclusion zone surrounding coastal communities; (2) the timing and location of the specified activities; (3) the timing and location of subsistence hunting activities; (4) requirements for community consultations; and (5) requirements for developing POCs to resolve any conflicts. Furthermore, the regulatory process will allow the opportunity for communities to review operational plans and make recommendations for additional mitigation measures, if necessary.

*Comment:* The Service should prepare the Plan of Cooperation (POC) at the beginning of the planning stages to ensure a document is produced that is acceptable to all parties.

*Response:* The POC is developed by industry and is a document that involves industry and the affected subsistence communities. It is included as a section of the incidental take request packet submitted by industry to the Service. Within that context, the POC process requires presentation of project specific information, such as operation plans, to the communities to identify any specific concerns that need to be addressed. It is impossible to develop a POC until the nature of specific projects is identified and the concerns of the affected community are heard. Coordination with the affected subsistence communities and development of the POC are the responsibility of industry; however, the Service offers guidance during the process, if necessary. The requirements and process for the POC, including the Service’s right to review and reject the POC if it does not provide adequate safeguards to ensure that marine mammals will remain available for subsistence use, are described in the preamble of the rule and reiterated in the regulations.

*Comment:* A mandatory POC process diminishes industry’s ability to plan operations, or to negotiate fair and reasonable operational restrictions.

*Response:* The MMPA requires the Secretary to make a finding that the total of any authorized incidental take of marine mammals will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses. The MMPA further identifies those exempt from the MMPA and, therefore, able to take marine mammals for subsistence purposes, i.e. any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean. The Service has determined that the process of coordinating with the commissions, who represent the various Native communities, provides a viable mechanism for ensuring the availability for subsistence take. Even though a proposed operation may be more than 40 miles from a coastal subsistence-use community, the POC includes other measures that will be taken to avoid or minimize interferences with subsistence hunters.

Nonetheless, clarifying language was added indicating that any activity with the potential to disrupt animals or interact with hunters within the 25-mile coastal deferral zone and/or within traditional hunting areas (defined by a 40-mile radius of the communities) will require the applicant to consult with potentially effected communities (e.g., open public meeting within the community) and appropriate Native Hunting Commissions; the Service recognizes the Eskimo Walrus Commission (EWC) and the Alaska Nanuq Commission (ANC) as entities charged with representing the interests of walrus and polar bear hunters in these communities. Any concerns expressed by the communities (or Native Commissions) must be addressed through the POC. The Service will be responsible for determining whether or not community concerns have been adequately addressed.

*Comment:* The 40-mile radius identified in the regulations is larger than the area typically utilized by hunters during the open water season.

*Response:* The Service considered the best available information concerning walrus and polar bear hunting practices along the western coast of Alaska adjacent to the Chukchi Sea, including several unpublished reports and self-reported information collected through the Service MTRP (harvest monitoring) in defining the 40-mile radius around subsistence hunting communities. Although any additional studies will be considered if they become available, based on the information at-hand, the Service believes the 40-mile radius is an accurate depiction of the open water

season area used by walrus and polar bear hunters.

#### 6. Oil Spills and Related Issues

*Comment:* The Service assumptions that there would be relatively small volumes of material spilling in open water due to use of blow-out technology and implementation of MMS operating stipulations is not adequate. The EA should assess the efficacy of the current spill prevention technology and clean-up procedures.

*Response:* We disagree. The Service's analysis acknowledges there is a potential for spills to occur. However, we believe that the occurrence of such an event is minimized by adherence to the regulatory standards that are in place. This is supported by historical evidence, which indicates that adherence to oil spill plans and management practices has resulted in no major spills associated with exploratory work in the Beaufort Sea or the Chukchi Sea. In addition, we believe that restricting in-water work to the ice-free period (i.e., after July 1 or earlier if the area is deemed ice-free) further minimizes potential impacts from a spill.

*Comment:* The Service does not adequately address potential take from oil or other toxic spills, including potential lethal takes that may result from the seismic vessels and support operations, drill rigs, fuel barges, waste disposal, camp operations, survey flights, and potential "in-situ" burning of oil spills.

*Response:* We disagree. The Service did analyze the potential for nonlethal take from oil or other toxic spills associated with the exploration activities described in the preamble of the rule, and concluded that the potential is small. To date, there have been no major spills associated with exploration activities in either the Beaufort or Chukchi Seas. Large spills (> 1,000 bbls) have historically been associated with production facilities or at pipelines connecting wells to the pipeline system. It is anticipated that during the authorized exploratory activities, adherence to the current regulatory standards and practices for prevention, containment, and clean-up would minimize potential adverse impacts from oil or other spills.

In addition, the Service concluded the potential for the lethal take of polar bear or walrus during Industry operations is small. As authorized under section 101(a)(5)(A) of the MMPA, these regulations allow for the incidental, but not intentional, take of polar bears and Pacific walruses. However, this provision does not override

requirements of other environmental legislation, such as the Clean Water Act and the Oil Pollution Act. In the event of a large spill that results in the lethal take of polar bears or Pacific walruses, we will reassess the impacts to polar bear and Pacific walrus populations and reconsider the appropriateness of authorization for incidental taking through this regulation.

*Comment:* The Service does not adequately assess the potential for oil spills as a result of future development and production.

*Response:* These regulations are of a finite duration (i.e., five years) and authorize incidental take associated with specified exploration activities only. The analyses did not assess the potential for spills from full-scale development and production because that was beyond the scope of analysis. If and when a full-scale facility is proposed, the Service will assess the potential impacts of those specific activities at that time.

*Comment:* The Service has failed to assess the risk of fuel or oil spills to polar bears and walruses during authorized activities.

*Response:* We disagree. The Service acknowledges that there is a potential for fuel spills to occur; however, we believe that the occurrence of such an event is minimized by adherence to regulatory standards for spill prevention, containment, and cleanup. In the event of a large spill, we would reassess the impacts to the polar bear and walrus populations and reconsider the appropriateness of authorizations for taking through Section 101(a)(5)(A) of the MMPA.

*Comment:* The Service should conduct modeling studies for the overlay of potential operations with spill trajectories similar to what was done for the Northstar and Liberty projects.

*Response:* While we agree that more information and analyses will continue to improve decision-making abilities, conducting spill trajectories in a manner similar to those produced for the production sites of Northstar and Liberty in the Beaufort Sea is not possible for the types of activities, i.e., exploration, considered under these regulations. This is because Northstar and Liberty are production sites, with known location of facilities, whereas specified drill sites for exploratory activities in the Chukchi Sea are largely unknown at this time. The Service has participated in developing an oil spill contingency plan that covers the area of the Chukchi Sea. Under spill response and contingency planning, federal agencies such as the USCG, MMS, and

the Service identify vulnerable natural resource areas and develop plans to protect these areas in the event of a spill. These 5-year regulations cover only exploratory activities when, and if, incidental take regulations are requested for future production activities in the Chukchi Sea, oil spill analysis using spill trajectories and oil spill risk assessment or similar analysis techniques will be part of the future analysis.

*Comment:* Pre-booming should be removed as a requirement for fuel transfers during seismic survey operations.

*Response:* The text has been modified to indicate that operators must operate in full compliance with an MMS approved Oil Spill Prevention and Response Plan. Proposed operations in sensitive habitat areas will be reviewed by the Service on a case-by-case basis and may result in the prescription of additional mitigation measures (such as pre-booming of vessels during fuel transfers) through the LOA process.

## 7. Climate Change

*Comment:* Potential effects of climate changes must be assessed as part of a long-term monitoring and mitigation program. A broad-based population and monitoring impacts assessment program should be developed to ensure that individual, indirect, and cumulative impacts do not have significant adverse impacts on populations, and that they do not adversely affect the availability of marine mammals for subsistence use.

*Response:* The scope of climate change goes beyond this analysis, which is to determine whether the total level of incidental take as a result of the exploration activities proposed by the oil and gas industry will have a negligible impact on polar bears and walrus as well as no unmitigable adverse impact on subsistence use. The Service has factored the information on climate change and its effects on these species into the decision-making process and into prescribing the permissible methods of take, including the mitigation and monitoring measures that will be required.

Further, the Service, in cooperation with the USGS and the Alaska Department of Fish and Game, surveys and monitors the status and trends of polar bears and walrus. The prescribed regulations and associated LOAs will allow us to modify mitigation and monitoring measures as needed to take into account new information on impacts of climate change to the polar bear and Pacific walrus populations.

Nonetheless, the objective of these regulations is not to analyze the impact

of climate change on polar bears and walrus but, to analyze the impact of oil and gas exploration activities on these species taking into consideration other ongoing factors, which includes the information gained on climate change. Although effects of climate change, such as declining sea ice, will likely affect populations, the majority of predicted takes based on current known data, Service knowledge of trust species, and previous Industry information from the Beaufort Sea suggests that the majority of takes will be limited to changes in behavior of individual animals of limited duration.

*Comment:* The small number finding is suspect due to the rapid change that the Arctic is undergoing as a result of global warming. The retreat of the sea ice from the Alaska coast has had numerous impacts, such as drowned bears documented by MMS.

*Response:* The small number finding for these regulations is based on potential Industry activities and the type of industry/bear interactions that may occur and incidental take based on those activities, not events occurring in the natural environment, such as bears caught in a storm event. Available information does indicate that, due to changes in the Arctic environment, there may be an increase in the number of bears swimming offshore, which suggests an increased susceptibility to storm events. The Service did take this information into consideration in our analysis.

Although there is a possibility that the exploration activities in the Chukchi Sea geographic region may encounter polar bears in the water, recent monitoring (2006 and 2007) and observations conclude that Industry activities have only encountered small numbers of bears (four individuals in 2006 and five individuals in 2007) late in the open water season by support vessels when they were operating near ice floes. These disturbances have been limited to temporary, short-term behavior changes. In addition, the mitigation measures we have prescribed, e.g., 0.5-mile operation exclusion zone around swimming bears and trained polar bear observers on board the vessels, will reduce potential interactions between polar bears and offshore seismic operations. Similarly, the mitigation measures prescribed for onshore exploratory activities, e.g., measures for avoiding dens and reducing the potential for human-bear interactions, are designed to reduce the numbers of takes of bear by Industry. In any event, there will be constant monitoring during the course of Industry activities and we will modify

the mitigation requirements as necessary to ensure that the numbers of animals taken remains small.

*Comment:* Impacts from climate change on walrus are apparent and further discredit the assumptions used to estimate walrus take from exploration activities.

*Response:* The Service agrees that the effects of climate change may impact Pacific walrus and new information on the extent of the potential impacts continues to present itself. However, the analysis for these regulations is not an estimated take due to climate change but, an estimated incidental take due to exploration activities. Regardless of climate change impacts similar to those expressed by the commenter, the Service believes that the mitigation measures we've prescribed, e.g., restricting the timing of offshore exploration activities, imposing a 0.5-mile operational exclusion zone, and a 1,000-ft altitude restriction, will ensure that the proposed exploration activities do not exacerbate the situation. In fact, with the reporting requirements, we stand to gain a greater understanding of the impacts and, through the use of adaptive management, can modify the mitigation requirements or withdraw the regulations as necessary. In this way, we can monitor and minimize any potential impacts of the exploration activities.

*Comment:* Because the status of both the Pacific walrus and Bering/Chukchi Sea polar bear stock are unknown, the Service cannot conclude that exploration activities, which will harass thousands of individuals, will have no more than a "negligible effect" on the stocks. Further, the Service "negligible impact" finding fails to adequately consider that the Chukchi Sea and adjacent areas are undergoing rapid change as a result of global warming and that impacts are likely to be even more severe than projected.

*Response:* The Service admits that we do not have a current number for actual population status of the Pacific walrus or the Chukchi/Bering Seas stock of polar bears. We further acknowledge that climate change must be taken into consideration as it relates to cumulative impacts on the species. However, before reaching its negligible impact determination, the Service considered not only the number of potential incidental takes, but also the type of incidental take anticipated. In the case of the proposed activities covered by these regulations, we do not anticipate any lethal takes will occur. We have concluded that incidental takes will be limited to temporary and transitory modifications of animal behavior that

will not have any negative impacts on population levels, regardless of changes in the environment.

The Service's analysis of negligible impact was based on the distribution and number of the species during proposed activities, its biological characteristics, the nature of the proposed activities, the potential effects, documented impacts, mitigation measures that will be implemented, as well as other data provided by monitoring programs in the Beaufort Sea. Taking these factors into consideration, the Service made a determination that any potential incidental take (i.e., harassment) due to Industry activities would have a negligible impact on polar bears and Pacific walruses.

The Service recognizes that climate change is a long-term, complicated issue. Although the short-term impacts of declining sea ice due to climate change on polar bears and walruses were evaluated in the analysis conducted, it is beyond the scope of these incidental take regulations to address the potentially wide ranging long-term impacts of climate change. However, it is important to note that, should Industry impacts increase during the five-year time period of these regulations beyond the scope of impacts analyzed, the Service will review this new information in terms of negligible impact. As previously indicated, the Service has the ability to withdraw the regulations if impacts are more than negligible.

#### 8. Other Applicable Agreements/Regulations

*Comment:* Allowing incidental take is a violation of the 1973 Agreement on the Conservation of Polar Bears to protect essential polar bear habitats. The Service must explain how the incidental take regulations and authorizations will protect such habitats.

*Response:* The incidental take regulations are consistent with the Agreement. Article II of the Polar Bear Agreement lists three obligations of the Parties in protecting polar bear habitat: (1) To take "appropriate action to protect the ecosystem of which polar bears are a part;" (2) to give "special attention to habitat components such as denning and feeding sites and migration patterns;" and (3) to manage polar bear populations in accordance with "sound conservation practices" based on the best available scientific data. The Service's actions are consistent with these responsibilities.

Promulgation of these regulations is authorized under Section 101(a)(5)(A) of the MMPA. The primary objective of the

MMPA is to maintain the health and stability of the marine ecosystem with a goal of maintaining marine mammal populations at optimum sustainable levels. As such, the MMPA served in large part to provide for domestic implementation of the Polar Bear Agreement. There are a number of other statutes that augment habitat protection for polar bears; these include, but are not limited to, the following: Coastal Zone Management Act; National Wildlife Refuge Act; Clean Water Act; Outer Continental Shelf Lands Act, Alaska National Interest Lands Conservation Act; and Marine Protection Research and Sanctuaries Act.

In addition, in 1993, the Secretary of the Interior required that, before incidental take regulations for the Beaufort Sea region could be finalized, the Service develop a polar bear habitat conservation strategy. And, in 1995, the Service developed a *Habitat Conservation Strategy for Polar Bears in Alaska* (Strategy). Completed in August of 1995, the Strategy provides a useful tool for habitat conservation and identifies important habitat areas used by polar bears for denning and feeding.

This rule is consistent with the Service's treaty obligations because it incorporates mitigation measures that ensure the protection of polar bear habitat. The anticipated LOAs for industrial activities will be conditioned to include area or seasonal timing limitations or prohibitions, such as placing one-mile avoidance buffers around known or observed dens (which halts or limits activity until the bear naturally leaves the den), building roads perpendicular to the coast to allow for polar bear movements along the coast, and monitoring the effects of the activities on polar bears.

In addition to the protections provided for known or observed dens, Industry has assisted in the research of FLIR thermal imagery, which is useful in detecting the heat signatures of polar bear dens. By conducting FLIR surveys prior to activities to identify polar bear dens along with verification of these dens by scent-trained dogs, disturbance of even unknown denning females is limited. Another area of Industry support has been the use of digital elevation models and aerial imagery in identifying habitats suitable for denning.

LOAs will also require the development of polar bear human interaction plans in order to minimize potential for encounters and to mitigate for adverse effects should an encounter occur. These plans protect and enhance the safety of polar bears using habitats

within the area of industrial activity. Finally, as outlined in our regulations at 50 CFR 18.27(f)(5), LOAs may be withdrawn or suspended, if non-compliance of the prescribed regulations occurs.

*Comment:* In light of the ESA, the Service should require a conference opinion for any activity that is likely to jeopardize the continued existence of any species proposed for listing.

*Response:* We agree, under section 7(a)(4) of the ESA, each Federal agency is required to confer with the Secretary on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the ESA. During the time that the Service was developing these regulations, the polar bear was proposed for listing under the ESA. The Service made a determination that this rule would not pose any likelihood of jeopardy to the species, and therefore, a 7(a)(4) conference was not required. On May 15, 2008 (73 FR 28212), the polar bear was listed as threatened and the Service has since completed an intra-Service section 7(a)(2) consultation, which confirms that these incidental take regulations are not likely to jeopardize the continued existence of this species.

#### Required Determinations

##### *National Environmental Policy Act (NEPA) Considerations*

We have prepared an EA in conjunction with this rulemaking, and have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the NEPA of 1969. For a copy of the EA, contact the individual identified above in the section **FOR FURTHER INFORMATION CONTACT**.

##### *Endangered Species Act (ESA)*

On May 15, 2008 (73 FR 28212) the polar bear was listed as a threatened species under the ESA. The Service conducted an intra-Service section 7(a)(2) consultation and completed a Biological Opinion (BO) concluding that the issuance of these regulations, including the process for issuing LOAs, is not likely to jeopardize the continued existence of the polar bear.

##### *Regulatory Planning and Review*

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

#### *Small Business Regulatory Enforcement Fairness Act*

We have determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule is not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### *Regulatory Flexibility Act*

We have also determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Oil companies and their contractors conducting exploration, development, and production activities in Alaska have been identified as the only likely applicants under the regulations. Therefore, a Regulatory Flexibility Analysis is not required. In addition, these potential applicants have not been identified as small businesses and, therefore, a Small Entity Compliance Guide is not required. The analysis for this rule is available from the individual identified above in the section **FOR FURTHER INFORMATION CONTACT.**

#### *Takings Implications*

This rule does not have takings implications under Executive Order 12630 because it authorizes the nonlethal, incidental, but not intentional, take of walruses and polar bears by oil and gas Industry companies and thereby exempts these companies from civil and criminal liability as long as they operate in compliance with the terms of their LOAs. Therefore, a takings implications assessment is not required.

#### *Federalism Effects*

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132. The MMPA gives the Service the authority and responsibility to protect walruses and polar bears.

#### *Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. This rule will not produce a Federal mandate of \$100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

#### *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, Secretarial Order 3225, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. We have evaluated possible effects on federally recognized Alaska Native tribes. Through the LOA process identified in the regulations, Industry presents a Plan of Cooperation with the Native communities most likely to be affected and engages these communities in numerous informational meetings.

#### *Civil Justice Reform*

The Departmental Solicitor's Office has determined that these regulations do not unduly burden the judicial system and meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

#### *Paperwork Reduction Act*

This rule contains information collection requirements. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Although we had initially planned to combine our information collection request for the Chukchi Sea into the request package for the Beaufort Sea

(OMB Control No. 1018-0070) because the activities and requirements are nearly identical, we were not able to finalize the rule for the Chukchi Sea prior to the expiration date of the information collection approved for the Beaufort Sea. Therefore, we separated the requests for approval. The proposed rule for incidental take regulations in the Chukchi Sea invited interested members of the public and affected agencies to comment on the proposed information collection and recordkeeping activities for the Chukchi Sea. We have addressed all comments received in this preamble.

OMB has approved our collection of information for incidental take of marine mammals during specified activities in the Chukchi Sea for a 3-year term and assigned OMB Control No. 1018-0139. We will use the information that we collect to evaluate applications for specific incidental take regulations from the oil and gas industry to determine whether such regulations and subsequent LOAs should be issued. The information is needed to (1) establish the scope of specific incidental take regulations and (2) evaluate impacts of activities on species or stocks of marine mammals and on their availability for subsistence uses by Alaska Natives. It will ensure that applicants considered all available means for minimizing the incidental take associated with a specific activity.

We estimate that up to 10 companies will request LOAs and submit monitoring reports annually for the Chukchi Sea region covered by the specific regulations. We estimate that the total annual burden associated with the request will be 792 hours during years when applications for regulations are required and 492 hours when regulatory applications are not required. This represents an average annual estimated burden taken over a 3-year period, which includes the initial 300 hours required to complete the request for specific procedural regulations. We estimate that there will be an annual average of six on-site observation reports per LOA. For each LOA expected to be requested and issued subsequent to issuance of specific procedural regulations, we estimate that 33.5 hours per project will be invested (24 hours will be required to complete each request for an LOA, approximately 1.5 hours will be required for onsite observation reporting, and 8 hours will be required to complete each final monitoring report).

*Title:* Incidental Take of Marine Mammals During Oil and Gas Exploration Activities in the Chukchi

Sea and Adjacent Coast of Alaska, 50 CFR 18.27 and 50 CFR 18, Subpart I.  
OMB Number: 1018-0139.

Bureau form number: None.  
Frequency of collection: Semiannual.

Description of respondents: Oil and gas industry companies.

Type of Action	Annual number of responses	Average burden hours per action	Total annual burden hours
One time application for procedural regulations .....	* 1	300	300
LOA Requests .....	12	24	288
Onsite Monitoring and Observation Reports .....	72	1.5	108
Final Monitoring Report .....	12	8	96
Total .....	97	.....	792

\* Per term of regulations.

Members of the public and affected agencies may comment on these information collection and recordkeeping activities at any time. *Comments are invited on:* (1) Whether or not the collection of information is necessary for the proper performance of the functions of the Service, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden for this collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

Send your comments and suggestions on this information collection to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358-2269 (fax); or [hope\\_grey@fws.gov](mailto:hope_grey@fws.gov) (e-mail).

#### Energy Effects

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule provides exceptions from the taking prohibitions of the MMPA for entities engaged in the exploration of oil and gas in the Chukchi Sea and adjacent western coast of Alaska. By providing certainty regarding compliance with the MMPA, this rule will have a positive effect on Industry and its activities. Although the rule requires Industry to take a number of actions, these actions have been undertaken by Industry for many years as part of similar past regulations. Therefore, this rule is not expected to significantly affect energy supplies, distribution, or use and does not

constitute a significant energy action. No Statement of Energy Effects is required.

#### List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and record keeping requirements, Transportation.

#### Regulation Promulgation

■ For the reasons set forth in the preamble, the Service amends part 18, subchapter B of chapter 1, title 50 of the Code of Federal Regulations as set forth below.

#### PART 18—MARINE MAMMALS

■ 1. The authority citation of 50 CFR part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Amend part 18 by adding a new subpart I to read as follows:

#### Subpart I—Nonlethal Taking of Pacific Walruses and Polar Bears Incidental to Oil and Gas Exploration Activities in the Chukchi Sea and Adjacent Coast of Alaska

Sec.

18.111 What specified activities does this subpart cover?

18.112 In what specified geographic region does this subpart apply?

18.113 When is this subpart effective?

18.114 How do I obtain a Letter of Authorization?

18.115 What criteria does the Service use to evaluate Letter of Authorization requests?

18.116 What does a Letter of Authorization allow?

18.117 What activities are prohibited?

18.118 What are the mitigation, monitoring, and reporting requirements?

18.119 What are the information collection requirements?

#### Subpart I—Nonlethal Taking of Pacific Walruses and Polar Bears Incidental to Oil and Gas Exploration Activities in the Chukchi Sea and Adjacent Coast of Alaska

##### § 18.111 What specified activities does this subpart cover?

Regulations in this subpart apply to the nonlethal incidental, but not intentional, take of small numbers of Pacific walruses and polar bears by you (U.S. citizens as defined in § 18.27(c)) while engaged in oil and gas exploration activities in the Chukchi Sea and adjacent western coast of Alaska.

##### § 18.112 In what specified geographic region does this subpart apply?

This subpart applies to the specified geographic region defined as the continental shelf of the Arctic Ocean adjacent to western Alaska. This area includes the waters (State of Alaska and Outer Continental Shelf waters) and seabed of the Chukchi Sea, which encompasses all waters north and west of Point Hope (68°20'20" N, –166°50'40" W, BGN 1947) to the U.S.-Russia Convention Line of 1867, west of a north-south line through Point Barrow (71°23'29" N, –156° 28'30" W, BGN 1944), and up to 200 miles north of Point Barrow. The region also includes the terrestrial coastal land 25 miles inland between the western boundary of the south National Petroleum Reserve-Alaska (NPR-A) near Icy Cape (70°20'00" N, –148°12'00" W) and the north-south line from Point Barrow. This terrestrial region encompasses a portion of the Northwest and South Planning Areas of the NPR-A. Figure 1 shows the area where this subpart applies.

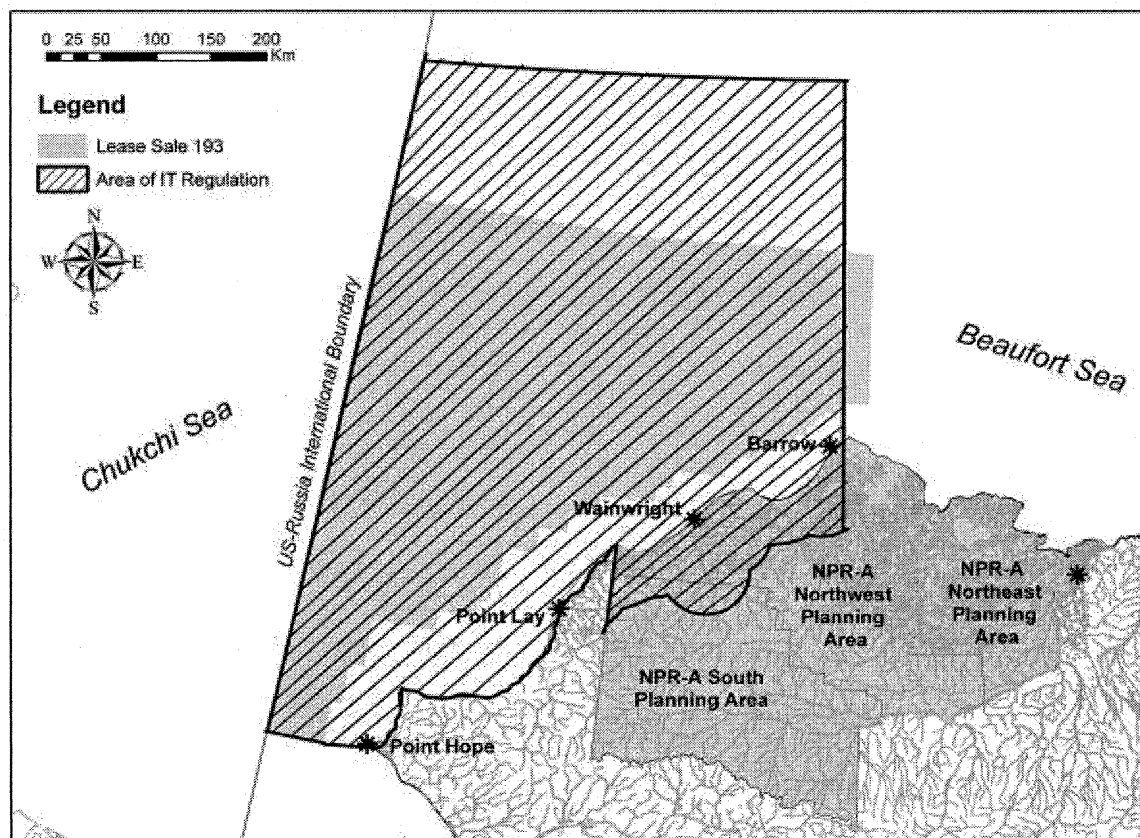


Figure 1: The geographic area of the Chukchi Sea and onshore coastal areas covered by the incidental take regulations.

**§ 18.113 When is this subpart effective?**

Regulations in this subpart are effective from June 11, 2008 through June 11, 2013 for year-round oil and gas exploration activities.

**§ 18.114 How do I obtain a Letter of Authorization?**

(a) You must be a U.S. citizen as defined in § 18.27(c).

(b) If you are conducting an oil and gas exploration activity in the specified geographic region described in § 18.112 that may cause the taking of Pacific walrus (walrus) or polar bears and you want nonlethal incidental take authorization under this rule, you must apply for a Letter of Authorization for each exploration activity. You must submit the application for authorization to our Alaska Regional Director (see 50 CFR 2.2 for address) at least 90 days prior to the start of the proposed activity.

(c) Your application for a Letter of Authorization must include the following information:

(1) A description of the activity, the dates and duration of the activity, the specific location, and the estimated area

affected by that activity, i.e., a plan of operation.

(2) A site-specific plan to monitor and mitigate the effects of the proposed activity on walrus and polar bears encountered during the ongoing activities, i.e., a marine mammal monitoring and mitigation plan. Your monitoring program must document the effects on these marine mammals and estimate the actual level and type of take. The monitoring requirements will vary depending on the activity, the location, and the time of year.

(3) A site-specific polar bear awareness and interaction plan, i.e., a polar bear interaction plan.

(4) A record of community consultation. Applicants must consult with potentially affected subsistence communities along the Chukchi Sea coast (Point Hope, Point Lay, Wainwright, and Barrow) and appropriate subsistence user organizations (the Eskimo Walrus Commission and the Alaska Nanuq (polar bear) Commission) to discuss the location, timing, and methods of proposed operations and support activities and identify any potential conflicts with subsistence walrus and polar bear hunting activities in the communities. Applications for Letters of Authorization must include documentation of all consultations with

potentially affected user groups. Documentation must include a summary of any concerns identified by community members and hunter organizations, and the applicant's responses to identified concerns. Mitigation measures are described in § 18.118.

**§ 18.115 What criteria does the Service use to evaluate Letter of Authorization requests?**

(a) We will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographic location. We will determine whether the level of activity identified in the request exceeds that analyzed by us in considering the number of animals likely to be taken and evaluating whether there will be a negligible impact on the species or adverse impact on the availability of the species for subsistence uses. If the level of activity is greater, we will reevaluate our findings to determine if those findings continue to be appropriate based on the greater level of activity that you have requested. Depending on the results of the evaluation, we may grant the authorization, add further conditions, or deny the authorization.

(b) In accordance with § 18.27(f)(5), we will make decisions concerning withdrawals of Letters of Authorization,



either on an individual or class basis, only after notice and opportunity for public comment.

(c) The requirement for notice and public comment in paragraph (b) of this section will not apply if we determine that an emergency exists that poses a significant risk to the well-being of species or stocks of walrus or polar bears.

**§ 18.116 What does a Letter of Authorization allow?**

(a) Your Letter of Authorization may allow the nonlethal incidental, but not intentional, take of walrus and polar bears when you are carrying out one or more of the following activities:

(1) Conducting geological and geophysical surveys and associated activities;

(2) Drilling exploratory wells and associated activities; or

(3) Conducting environmental monitoring activities associated with exploration activities to determine specific impacts of each activity.

(b) Each Letter of Authorization will identify conditions or methods that are specific to the activity and location.

**§ 18.117 What activities are prohibited?**

(a) Intentional take and lethal incidental take of walrus or polar bears; and

(b) Any take that fails to comply with this part or with the terms and conditions of your Letter of Authorization.

**§ 18.118 What are the mitigation, monitoring, and reporting requirements?**

(a) *Mitigation.* Holders of a Letter of Authorization must use methods and conduct activities in a manner that minimizes to the greatest extent practicable adverse impacts on walrus and polar bears, their habitat, and on the availability of these marine mammals for subsistence uses. Dynamic management approaches, such as temporal or spatial limitations in response to the presence of marine mammals in a particular place or time or the occurrence of marine mammals engaged in a particularly sensitive activity (such as feeding), must be used to avoid or minimize interactions with polar bears, walrus, and subsistence users of these resources.

(1) *Operating conditions for operational and support vessels.*

(i) Operational and support vessels must be staffed with dedicated marine mammal observers to alert crew of the presence of walrus and polar bears and initiate adaptive mitigation responses.

(ii) At all times, vessels must maintain the maximum distance possible from

concentrations of walrus or polar bears. Under no circumstances, other than an emergency, should any vessel approach within a 805-m (0.5-mi) radius of walrus or polar bears observed on land or ice.

(iii) Vessel operators must take every precaution to avoid harassment of concentrations of feeding walrus when a vessel is operating near these animals. Vessels should reduce speed and maintain a minimum 805-m (0.5-mi) operational exclusion zone around feeding walrus groups. Vessels may not be operated in such a way as to separate members of a group of walrus from other members of the group. When weather conditions require, such as when visibility drops, vessels should adjust speed accordingly to avoid the likelihood of injury to walrus.

(iv) The transit of operational and support vessels through the specified geographic region is not authorized prior to July 1. This operating condition is intended to allow walrus the opportunity to disperse from the confines of the spring lead system and minimize interactions with subsistence walrus hunters. Exemption waivers to this operating condition may be issued by the Service on a case-by-case basis, based upon a review of seasonal ice conditions and available information on walrus and polar bear distributions in the area of interest.

(v) All vessels must avoid areas of active or anticipated subsistence hunting for walrus or polar bear as determined through community consultations.

(2) *Operating conditions for aircraft.*

(i) Operators of support aircraft should, at all times, conduct their activities at the maximum distance possible from concentrations of walrus or polar bears.

(ii) Under no circumstances, other than an emergency, should aircraft operate at an altitude lower than 305 m (1,000 ft) within 805 m (0.5 mi) of walrus or polar bears observed on ice or land. Helicopters may not hover or circle above such areas or within 805 m (0.5 mile) of such areas. When weather conditions do not allow a 305-m (1,000-ft) flying altitude, such as during severe storms or when cloud cover is low, aircraft may be operated below the 305-m (1,000-ft) altitude stipulated above. However, when aircraft are operated at altitudes below 305 m (1,000 ft) because of weather conditions, the operator must avoid areas of known walrus and polar bear concentrations and should take precautions to avoid flying directly over or within 805 m (0.5 mile) of these areas.

(iii) Plan all aircraft routes to minimize any potential conflict with active or anticipated walrus or polar bear hunting activity as determined through community consultations.

(3) *Additional mitigation measures for offshore exploration activities.*

(i) Offshore exploration activities will be authorized only during the open-water season, defined as the period July 1 to November 30. Exemption waivers to the specified open-water season may be issued by the Service on a case-by-case basis, based upon a review of seasonal ice conditions and available information on walrus and polar bear distributions in the area of interest.

(ii) To avoid significant additive and synergistic effects from multiple oil and gas exploration activities on foraging or migrating walrus, operators must maintain a minimum spacing of 24 km (15 mi) between all active seismic-source vessels and/or exploratory drilling operations. No more than four simultaneous seismic operations will be authorized in the Chukchi Sea region at any time.

(iii) No offshore exploration activities will be authorized within a 64-km (40-mi) radius of the communities of Barrow, Wainwright, Point Lay, or Point Hope, unless provided for in a Service-approved, site-specific Plan of Cooperation as described in paragraph (a)(6) of this section.

(iv) Aerial monitoring surveys or an equivalent monitoring program acceptable to the Service will be required to estimate the number of walrus and polar bears in a proposed project area.

(4) *Additional mitigation measures for offshore seismic surveys.* Any offshore exploration activity expected to include the production of pulsed underwater sounds with sound source levels  $\geq 160$  dB re 1  $\mu$ Pa will be required to establish and monitor acoustic exclusion and disturbance zones and implement adaptive mitigation measures as follows:

(i) *Monitor zones.* Establish and monitor with trained marine mammal observers an acoustically verified exclusion zone for walrus surrounding seismic airgun arrays where the received level would be  $\geq 180$  dB re 1  $\mu$ Pa; an acoustically verified exclusion zone for polar bear surrounding seismic airgun arrays where the received level would be  $\geq 190$  dB re 1  $\mu$ Pa; and an acoustically verified walrus disturbance zone ahead of and perpendicular to the seismic vessel track where the received level would be  $\geq 160$  dB re 1  $\mu$ Pa.

(ii) *Ramp-up procedures.* For all seismic surveys, including airgun testing, use the following ramp-up

procedures to allow marine mammals to depart the exclusion zone before seismic surveying begins:

(A) Visually monitor the exclusion zone and adjacent waters for the absence of polar bears and walrus for at least 30 minutes before initiating ramp-up procedures. If no polar bears or walrus are detected, you may initiate ramp-up procedures. Do not initiate ramp-up procedures at night or when you cannot visually monitor the exclusion zone for marine mammals.

(B) Initiate ramp-up procedures by firing a single airgun. The preferred airgun to begin with should be the smallest airgun, in terms of energy output (dB) and volume (in<sup>3</sup>).

(C) Continue ramp-up by gradually activating additional airguns over a period of at least 20 minutes, but no longer than 40 minutes, until the desired operating level of the airgun array is obtained.

(iii) *Power down/Shut down.*—Immediately power down or shut down the seismic airgun array and/or other acoustic sources whenever any walrus are sighted approaching close to or within the area delineated by the 180-dB re 1  $\mu$ Pa walrus exclusion zone, or polar bears are sighted approaching close to or within the area delineated by the 190-dB re 1  $\mu$ Pa polar bear exclusion zone. If the power down operation cannot reduce the received sound pressure level to 180-dB re 1  $\mu$ Pa (walrus) or 190-dB re 1  $\mu$ Pa (polar bears), the operator must immediately shut down the seismic airgun array and/or other acoustic sources.

(iv) *Emergency shut down.*—If observations are made or credible reports are received that one or more walrus and/or polar bears are within the area of the seismic survey and are in an injured or mortal state, or are indicating acute distress due to seismic noise, the seismic airgun array will be immediately shut down and the Service contacted. The airgun array will not be restarted until review and approval has been given by the Service. The ramp-up procedures provided in paragraph (a)(4)(ii) of this section must be followed when restarting.

(v) *Adaptive response for walrus aggregations.*—Whenever an aggregation of 12 or more walrus are detected within an acoustically verified 160-dB re 1  $\mu$ Pa disturbance zone ahead of or perpendicular to the seismic vessel track, the holder of this Authorization must:

(A) Immediately power down or shut down the seismic airgun array and/or other acoustic sources to ensure sound pressure levels at the shortest distance

to the aggregation do not exceed 160-dB re 1  $\mu$ Pa; and

(B) Not proceed with powering up the seismic airgun array until it can be established that there are no walrus aggregations within the 160-dB zone based upon ship course, direction, and distance from last sighting. If shut down was required, the ramp-up procedures provided in paragraph (a)(4)(ii) of this section must be followed when restarting.

(5) *Additional mitigation measures for onshore exploration activities.*

(i) *Polar bear interaction plan.*—Holders of Letters of Authorization will be required to develop and implement a Service-approved, site-specific polar bear interaction plan. Polar bear awareness training will also be required of certain personnel. Polar bear interaction plans will include:

(A) A description of the locations and types of activities to be conducted i.e., a plan of operation;

(B) A food and waste management plan;

(C) Personnel training materials and procedures;

(D) Site at-risk locations and situations;

(E) A snow management plan;

(F) Polar bear observation and reporting procedures; and

(G) Polar bear avoidance and encounter procedures.

(ii) *Polar bear monitors.*—If deemed appropriate by the Service, holders of a Letter of Authorization will be required to hire and train polar bear monitors to alert crew of the presence of polar bears and initiate adaptive mitigation responses.

(iii) *Efforts to minimize disturbance around known polar bear dens.*—

Holders of a Letter of Authorization must take efforts to limit disturbance around known polar bear dens.

(A) *Efforts to locate polar bear dens.*—Holders of a Letter of Authorization seeking to carry out onshore exploration activities in known or suspected polar bear denning habitat during the denning season (November–April) must make efforts to locate occupied polar bear dens within and near proposed areas of operation, utilizing appropriate tools, such as forward looking infrared (FLIR) imagery and/or polar bear scent-trained dogs. All observed or suspected polar bear dens must be reported to the Service prior to the initiation of exploration activities.

(B) *Exclusion zone around known polar bear dens.*—Operators must observe a 1-mile operational exclusion zone around all known polar bear dens during the denning season (November–April, or until the female and cubs leave

the areas). Should previously unknown occupied dens be discovered within 1 mile of activities, work in the immediate area must cease and the Service contacted for guidance. The Service will evaluate these instances on a case-by-case basis to determine the appropriate action. Potential actions may range from cessation or modification of work to conducting additional monitoring, and the holder of the authorization must comply with any additional measures specified.

(6) *Mitigation measures for the subsistence use of walrus and polar bears.* Holders of Letters of Authorization must conduct their activities in a manner that, to the greatest extent practicable, minimizes adverse impacts on the availability of Pacific walrus and polar bears for subsistence uses.

(i) *Community Consultation.*—Prior to receipt of a Letter of Authorization, applicants must consult with potentially affected communities and appropriate subsistence user organizations to discuss potential conflicts with subsistence hunting of walrus and polar bear caused by the location, timing, and methods of proposed operations and support activities (see § 18.114(c)(4) for details). If community concerns suggest that the proposed activities may have an adverse impact on the subsistence uses of these species, the applicant must address conflict avoidance issues through a Plan of Cooperation as described below.

(ii) *Plan of Cooperation (POC).*—Where prescribed, holders of Letters of Authorization will be required to develop and implement a Service-approved POC. The POC must include:

(A) A description of the procedures by which the holder of the Letter of Authorization will work and consult with potentially affected subsistence hunters; and

(B) A description of specific measures that have been or will be taken to avoid or minimize interference with subsistence hunting of walrus and polar bears and to ensure continued availability of the species for subsistence use.

(C) The Service will review the POC to ensure that any potential adverse effects on the availability of the animals are minimized. The Service will reject POCs if they do not provide adequate safeguards to ensure the least practicable adverse impact on the availability of walrus and polar bears for subsistence use.

(b) *Monitoring.* Depending on the siting, timing, and nature of proposed activities, holders of Letters of Authorization will be required to:

(1) Maintain trained, Service-approved, on-site observers to carry out monitoring programs for polar bears and walruses necessary for initiating adaptive mitigation responses.

(i) Marine Mammal Observers (MMOs) will be required on board all operational and support vessels to alert crew of the presence of walruses and polar bears and initiate adaptive mitigation responses identified in paragraph (a) of this section, and to carry out specified monitoring activities identified in the marine mammal monitoring and mitigation plan (see paragraph(b)(2) of this section) necessary to evaluate the impact of authorized activities on walruses, polar bears, and the subsistence use of these subsistence resources. The MMOs must have completed a marine mammal observer training course approved by the Service.

(ii) Polar bear monitors.—Polar bear monitors will be required under the monitoring plan if polar bears are known to frequent the area or known polar bear dens are present in the area. Monitors will act as an early detection system in regard to proximate bear activity to Industry facilities.

(2) Develop and implement a site-specific, Service-approved marine mammal monitoring and mitigation plan to monitor and evaluate the effects of authorized activities on polar bears, walruses, and the subsistence use of these resources.

(i) The marine mammal monitoring and mitigation plan must enumerate the number of walruses and polar bears encountered during specified exploration activities, estimate the number of incidental takes that occurred during specified exploration activities, and evaluate the effectiveness of prescribed mitigation measures.

(ii) Applicants must fund an independent peer review of proposed monitoring plans and draft reports of monitoring results. This peer review will consist of independent reviewers who have knowledge and experience in statistics, marine mammal behavior, and the type and extent of the proposed operations. The applicant will provide the results of these peer reviews to the Service for consideration in final approval of monitoring plans and final reports. The Service will distribute copies of monitoring reports to appropriate resource management agencies and co-management organizations.

(3) Cooperate with the Service and other designated Federal, State, and local agencies to monitor the impacts of oil and gas exploration activities in the Chukchi Sea on walruses or polar bears.

Where insufficient information exists to evaluate the potential effects of proposed activities on walruses, polar bears, and the subsistence use of these resources, holders of Letters of Authorization may be required to participate in joint monitoring and/or research efforts to address these information needs and insure the least practicable impact to these resources. Information needs in the Chukchi Sea include, but are not limited to:

(i) Distribution, abundance, and habitat use patterns of walruses and polar bears in offshore environments; and

(ii) Cumulative effects of multiple simultaneous operations on walruses and polar bears.

(c) *Reporting requirements.* Holders of Letters of Authorization must report the results of specified monitoring activities to the Service's Alaska Regional Director (see 50 CFR 2.2 for address).

(1) *In-season monitoring reports.*

(i) *Activity progress reports.*—Operators must keep the Service informed on the progress of authorized activities by:

(A) Notifying the Service at least 48 hours prior to the onset of activities;

(B) Providing weekly progress reports of authorized activities noting any significant changes in operating state and or location; and

(C) Notifying the Service within 48 hours of ending activity.

(ii) *Walrus observation reports.*—The operator must report, on a weekly basis, all observations of walruses during any Industry operation. Information within the observation report will include, but is not limited to:

(A) Date, time, and location of each walrus sighting;

(B) Number of walruses: sex and age;

(C) Observer name and contact information;

(D) Weather, visibility, and ice conditions at the time of observation;

(E) Estimated range at closest approach;

(F) Industry activity at time of sighting;

(G) Behavior of animals sighted;

(H) Description of the encounter;

(I) Duration of the encounter; and

(J) Actions taken.

(iii) *Polar bear observation reports.*—The operator must report, within 24 hours, all observations of polar bears during any Industry operation. Information within the observation report will include, but is not limited to:

(A) Date, time, and location of observation;

(B) Number of bears: sex and age;

(C) Observer name and contact information;

(D) Weather, visibility, and ice conditions at the time of observation;

(E) Estimated closest point of approach for bears from personnel and facilities;

(F) Industry activity at time of sighting, possible attractants present;

(G) Bear behavior;

(H) Description of the encounter;

(I) Duration of the encounter; and

(J) Actions taken.

(iv) *Notification of incident report.*—Reports should include all information specified under the species observation report, as well as a full written description of the encounter and actions taken by the operator. The operator must report to the Service within 24 hours:

(A) Any incidental lethal take or injury of a polar bear or walrus; and

(B) Observations of walruses or polar bears within prescribed mitigation-monitoring zones.

(2) *After-action monitoring reports.*

The results of monitoring efforts identified in the marine mammal monitoring and mitigation plan must be submitted to the Service for review within 90 days of completing the year's activities. Results must include, but are not limited to, the following information:

(i) A summary of monitoring effort including: total hours, total distances, and distribution through study period;

(ii) Analysis of factors affecting the visibility and detectability of walruses and polar bears by specified monitoring;

(iii) Analysis of the distribution, abundance, and behavior of walrus and polar bear sightings in relation to date, location, ice conditions, and operational state; and

(iv) Estimates of take based on density estimates derived from monitoring and survey efforts.

#### **§ 18.119 What are the information collection requirements?**

(a) We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The Office of Management and Budget has approved the collection of information contained in this subpart and assigned control number 1018–0139. You must respond to this information collection request to obtain a benefit pursuant to section 101(a)(5) of the Marine Mammal Protection Act. We will use the information to:

(1) Evaluate the application and determine whether or not to issue specific Letters of Authorization and;

(2) Monitor impacts of activities conducted under the Letters of Authorization.

(b) You should direct comments regarding the burden estimate or any other aspect of this requirement to the Information Collection Clearance

Officer, U.S. Fish and Wildlife Service,  
Department of the Interior, Mail Stop  
222 ARLSQ, 1849 C Street, NW.,  
Washington, DC 20240.

Dated: May 1, 2008.

**Lyle Lavery,**

*Assistant Secretary for Fish and Wildlife and  
Parks.*

[FR Doc. E8-12918 Filed 6-10-08; 8:45 am]

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# Federal Register

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**Wednesday,  
June 11, 2008**

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## **Part V**

## **Environmental Protection Agency**

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**40 CFR Part 63**

**National Emission Standards for  
Hazardous Air Pollutants: Mercury  
Emissions from Mercury Cell Chlor-Alkali  
Plants; Proposed Rule**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[EPA-HQ-OAR-2002-0017; FRL-8576-3]

RIN 2060-AN99

### National Emission Standards for Hazardous Air Pollutants: Mercury Emissions from Mercury Cell Chlor-Alkali Plants

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes amendments to the national emission standards for hazardous air pollutants (NESHAP) for mercury emissions from mercury cell chlor-alkali plants. This NESHAP (hereafter called the "2003 Mercury Cell MACT") limited mercury air emissions from these plants. Following promulgation of the 2003 Mercury Cell Maximum Achievable Control Technology (MACT) NESHAP, EPA received a petition to reconsider several aspects of the rule from the Natural Resources Defense Council (NRDC). NRDC also filed a petition for judicial review of the rule in the U.S. Court of Appeals for the DC Circuit. By a letter dated April 8, 2004, EPA granted NRDC's petition for reconsideration, and on July 20, 2004, the Court placed the petition for judicial review in abeyance pending EPA's action on reconsideration. This action is EPA's proposed response to NRDC's petition for reconsideration.

We are not proposing any amendments to the control and monitoring requirements for stack emissions of mercury established by the 2003 Mercury Cell MACT. This proposed rule would amend the requirements for cell room fugitive mercury emissions to require work practice standards for the cell rooms and to require instrumental monitoring of cell room fugitive mercury emissions. This proposed rule would also amend aspects of these work practice standards and would correct errors and inconsistencies in the 2003 Mercury Cell MACT that have been brought to our attention.

**DATES:** Comments. Comments must be received on or before August 11, 2008.

**Public Hearing.** If anyone contacts EPA by June 23, 2008 requesting to speak at a public hearing, a hearing will be held on July 11, 2008.

**ADDRESSES:** You may submit comments, identified by Docket ID No. EPA-HQ-OAR-2002-0017, by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>: Follow the instructions for submitting comments.
- **Agency Web Site:** <http://www.epa.gov/oar/docket.html>. Follow the instructions for submitting comments on the EPA Air and Radiation Docket Web site.

- **E-mail:** [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov). Include Docket ID No. EPA-HQ-OAR-2002-0017 in the subject line of the message.
- **Fax:** (202) 566-9744.
- **Mail:** National Emission Standards for Hazardous Air Pollutants for Mercury Cell Chlor-alkali Plants Docket, Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.

- **Hand Delivery:** EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2002-0017. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-

mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the National Emission Standards for Hazardous Air Pollutants for Mercury Cell Chlor-alkali Plants Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Dr. Donna Lee Jones, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243-02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541-5251; fax number: (919) 541-3207; e-mail address: [jones.donnalee@epa.gov](mailto:jones.donnalee@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Does this action apply to me?

The regulated categories and entities potentially affected by this proposed action include:

Category	NAICS code <sup>1</sup>	Examples of regulated entities
Industry .....	325181 .....	Alkalis and Chlorine Manufacturing.
Federal government .....		Not affected.

Category	NAICS code <sup>1</sup>	Examples of regulated entities
State/local/tribal government .....	.....	Not affected.

<sup>1</sup> North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 63.7682 of subpart IIIII, National Emission Standards for Hazardous Air Pollutants (NESHAP): Mercury Emissions from Mercury Cell Chlor-Alkali (hereafter called the “2003 Mercury Cell MACT”). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permitting authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

*B. What should I consider as I prepare my comments to EPA?*

Do not submit information containing confidential business information (CBI) to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404-02), Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, Attention Docket ID EPA-HQ-OAR-2002-0017. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

*C. Where can I get a copy of this document?*

In addition to being available in the docket, an electronic copy of this proposed action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on

the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: <http://www.epa.gov/ttn/oarpg/>. The TTN provides information and technology exchange in various areas of air pollution control.

*D. When would a public hearing occur?*

If anyone contacts EPA requesting to speak at a public hearing concerning the proposed amendments by June 23, 2008, we will hold a public hearing on July 11, 2008. If you are interested in attending the public hearing, contact Ms. Pamela Garrett at (919) 541-7966 to verify that a hearing will be held. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or an alternate site nearby.

*E. How is this document organized?*

The supplementary information in this preamble is organized as follows:

- I. General Information
  - A. Does this action apply to me?
  - B. What should I consider as I prepare my comments to EPA?
  - C. Where can I get a copy of this document?
  - D. When would a public hearing occur?
  - E. How is this document organized?
- II. Background Information
  - A. Reconsideration Overview
  - B. Industry Description
  - C. Regulatory Background
  - D. Details of the Petition for Reconsideration
- III. Summary of EPA's Reconsideration and Proposed Amendments
  - A. What were the issues that EPA reconsidered, and what are EPA's proposed responses?
  - B. What amendments are EPA proposing?
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- IV. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
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  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
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  - H. Executive Order 13211 (Energy Effects)
  - I. National Technology Transfer Advancement Act

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

## II. Background Information

### A. Reconsideration Overview

On December 19, 2003, EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Mercury Emissions from Mercury Chlor-alkali Plants (40 CFR part 63, subpart IIIII, 68 FR 70904), hereafter called the “2003 Mercury Cell MACT.” This rule for mercury cell chlor-alkali plants implemented section 112(d) of the Clean Air Act (CAA), which required all categories and subcategories of major sources listed under section 112(c) to meet hazardous air pollutant emission standards reflecting the application of the maximum achievable control technology (MACT). Mercury cell chlor-alkali plants are a subcategory of the chlorine production source category listed under the authority of section 112(c)(1) of the CAA. In addition, mercury cell chlor-alkali plants were listed as an area source category under section 112(c)(3) and (k)(3)(B) of the CAA. The 2003 Mercury Cell MACT satisfied our requirement to issue 112(d) regulations under each of these listings (for mercury).

The 2003 Mercury Cell MACT contained numerical emission limitations for the point sources of mercury emissions at mercury cell chlor-alkali plants. It also required that the plants either install mercury monitoring systems on the point source vents or that they test each vent manually at least once per week. The compliance date for the 2003 Mercury Cell MACT was December 19, 2006.

The 2003 Mercury Cell MACT also contained a set of work practice standards to address fugitive mercury emissions from the cell rooms. We determined that these procedures represented the MACT for the industry, and were considerably more stringent than the 40 CFR part 61 subpart E NESHAP requirements for control of mercury emissions (hereafter called the “part 61 Mercury NESHAP”) that were applicable to this industry prior to the 2003 Mercury Cell MACT. An alternative compliance option was included in the 2003 Mercury Cell MACT that required mercury



monitoring systems to be installed in the cell rooms with mandatory problem correction when a site-specific mercury concentration action level is exceeded. As of December 19, 2006, the compliance date for the 2003 Mercury Cell MACT, all facilities but one have chosen this alternative compliance option.

On February 17, 2004, the Natural Resources Defense Council (NRDC) submitted to EPA an administrative petition asking us to reconsider several aspects of the 2003 Mercury Cell MACT under Clean Air Act section 307(d)(7)(B). On the same day, NRDC and the Sierra Club filed a petition for judicial review of the 2003 Mercury Cell MACT in the U.S. Court of Appeals for the DC Circuit (Civ. No. 04–1048). The focus of many of the issues raised in the petition for reconsideration was EPA's treatment of the fugitive cell room emissions in the 2003 Mercury Cell MACT. Specifically, NRDC asked EPA to reconsider (1) the decision to develop a set of work practice requirements under Clean Air Act section 112(h) in lieu of a numeric emission limitation for cell rooms; (2) the decision to make the promulgated work practices optional for sources that choose to undertake continuous monitoring; (3) the decision to not require existing facilities to convert to a mercury-free chlorine manufacturing process; (4) the elimination of the previously applicable part 61 rule's 2,300 grams/day plant-wide emission limitation; and (5) the decision to create a subcategory of mercury cell chlor-alkali plants within the chlorine production category.

By a letter dated April 8, 2004, Jeffrey Holmstead, then-EPA Assistant Administrator for Air and Radiation, notified the NRDC that EPA had granted NRDC's petition for reconsideration of the 2003 Mercury Cell MACT. On July 20, 2004, the Court granted EPA's motion to hold the case in abeyance pending EPA's action on reconsideration of the 2003 Mercury Cell MACT. Today's notice is EPA's proposed response to NRDC's petition for reconsideration.

### *B. Industry Description*

There currently are five operating mercury cell chlor-alkali plants in the U.S., with one of these plants planning to convert to non-mercury technology by 2012. These five plants are in Augusta, Georgia; Ashtabula, Ohio; Charleston, Tennessee; New Martinsville, West Virginia; and Port Edwards, Wisconsin. The Port Edwards, Wisconsin facility is the one that is expected to convert to non-mercury technology.

Mercury cell chlor-alkali plants produce chlorine and caustic soda (sodium hydroxide) or caustic potash (potassium hydroxide) in an electrolytic reaction using mercury. A mercury cell plant typically has many individual cells housed in one or more cell buildings. Mercury cells are electrically connected together in series.

At a mercury cell chlor-alkali plant, mercury is emitted from point sources (i.e., stacks) and fugitive sources. Mercury also leaves the plant in wastewater and solid wastes. There are three primary point sources of mercury emissions at mercury cell plants: The end-box ventilation system vent, the by-product hydrogen system vent, and the mercury thermal recovery unit vents. Every mercury cell plant has a hydrogen by-product stream, and most have an end-box ventilation system. However, not all of the plants have thermal mercury recovery units. Of the five plants currently operating, all five facilities have end-box ventilation systems and two have thermal mercury recovery units.

In addition to the stack emissions, there are fugitive mercury emissions at these plants. The majority of fugitive mercury emissions occur from sources inside the cell room such as leaks from cells, decomposers, hydrogen piping, and other equipment. Fugitive mercury emissions also occur during maintenance activities such as cell or decomposer openings, mercury pump change-outs, and end-box seal replacements, etc. All of this equipment and activities are located in the cell room, so these fugitive mercury emissions would be emitted via the cell room ventilation system.

There are potential fugitive air emission sources outside of the cell room. These potential outside sources include leaks of mercury-contaminated brine in the brine treatment area, the wastewater system, and the handling and storage of mercury contaminated wastes.

### *C. Regulatory Background*

The part 61 Mercury NESHAP, which applied to all mercury cell chlor-alkali chlorine production plants prior to the 2003 Mercury Cell MACT, contained a numerical emission limit for mercury of 2,300 grams per day (g/day) for the entire plant. Point sources were limited to 1,000 g/day of mercury. If plants conducted a series of detailed design, maintenance, and housekeeping procedures, they were permitted under the part 61 rule to assume that fugitive mercury emissions from the cell room were 1,300 g/day, without having to demonstrate as such. All the mercury

cell plants complied with the part 61 Mercury NESHAP using these assumptions rather than testing and determining actual fugitive cell room mercury emissions. Therefore, the extent of actual plant-wide and cell room emissions that occurred under the part 61 rule could not be precisely determined.

In the 2003 Mercury Cell MACT rulemaking, pursuant to Clean Air Act section 112(d)(2) and (3), the regulatory analyses for the stack control requirements were based on the practices and controls of the lowest emitting plants out of the eleven facilities operating at the time of the MACT analyses. Existing mercury cell chlor-alkali production facilities with end-box ventilation systems were required by the 2003 Mercury Cell MACT to limit the aggregate mercury emissions from all by-product hydrogen streams and end-box ventilation system vents to not exceed 0.076 grams (g) mercury (Hg) per megagram (Mg) chlorine (Cl<sub>2</sub>) for any consecutive 52-week period. Existing mercury cell chlor-alkali production facilities without end-box ventilation systems were required to limit the mercury emissions from all by-product hydrogen streams to not exceed 0.033 g Hg/Mg Cl<sub>2</sub> for any consecutive 52-week period.

The 2003 Mercury Cell MACT contained a set of work practice standards to address and mitigate fugitive mercury releases at mercury cell chlor-alkali plants. The MACT analysis for the requirements to reduce fugitive mercury emissions was based on the best practices of the eleven facilities operating at the time of the July 2002 proposal for the Mercury Cell MACT (see 67 FR 44672, July 3, 2002). These work practice provisions included specific equipment standards such as the requirement that end boxes either be closed (that is, equipped with fixed covers), or that end box headspaces be routed to a ventilation system (40 CFR 63.8192, "What work practice standards must I meet?", and Tables 1 through 4 to subpart IIII of part 63). Other examples include requirements that piping in liquid mercury service have smooth interiors, that cell room floors be free of cracks and spalling (i.e., fragmentation by chipping) and coated with a material that resists mercury absorption, and that containers used to store liquid mercury have tight-fitting lids (Table 1 to subpart IIII of part 63). The work practice standards also included operational requirements. Examples of these include requirements to allow electrolyzers and decomposers to cool before opening, to keep liquid mercury in end boxes and mercury

pumps covered by an aqueous liquid at a temperature below its boiling point at all times, to maintain end box access port stoppers in good sealing condition, and to rinse all parts removed from the decomposer for maintenance prior to transport to another work area (Table 1 to subpart IIII of part 63).

A cornerstone of the work practice standards was the inspection program for equipment problems, leaking equipment, liquid mercury accumulations and spills, and cracks or spalling in floors and pillars and beams. Specifically, the 2003 Mercury Cell MACT required that visual inspections be conducted twice each day to detect equipment problems, such as end box access port stoppers not securely in place, liquid mercury in open containers not covered by an aqueous liquid, or leaking vent hoses (Table 2 to subpart IIII of part 63). If a problem was found during an inspection, the owner or operator was required to take immediate action to correct the problem. Monthly inspections for cracking or spalling in cell room floors were also required as well as semiannual inspections for cracks and spalling on pillars and beams. Any cracks or spalling found were required to be corrected within 1 month. Visual inspections for liquid mercury spills or accumulations were also required twice per day. If a liquid mercury spill or accumulation was identified during an inspection, the owner or operator was required to initiate cleanup of the liquid mercury within 1 hour of its detection (Table 3 to subpart IIII of part 63). In addition to cleanup, the 2003 Mercury Cell MACT required inspection of the equipment in the area of the spill or accumulation to identify the source of the liquid mercury. If the source was found, the owner or operator was required to repair the leaking equipment as discussed below. If the source was not found, the owner or operator was required to reinspect the area every 6 hours until the source was identified or until no additional liquid mercury was found at that location. Inspections of specific equipment for liquid mercury leaks were required once per day. If leaking equipment was identified, the 2003 Mercury Cell MACT required that any dripping mercury be contained and covered by an aqueous liquid, and that a first attempt to repair leaking equipment be made within 1 hour of the time it is identified. Leaking equipment was required to be repaired within 4 hours of the time it is identified, although there are provisions for delaying repair of leaking equipment for

up to 48 hours (Table 3 to subpart IIII of part 63) under certain conditions.

Inspections for hydrogen gas leaks were required twice per day. For a hydrogen leak at any location upstream of a hydrogen header, a first attempt at repair was required within 1 hour of detection of the leaking equipment, and the leaking equipment was required to be repaired within 4 hours (with provisions for delay of repair if the leaking equipment was isolated). For a hydrogen leak downstream of the hydrogen header but upstream of the final control device, a first attempt at repair was required within 4 hours, and complete repair required within 24 hours (with delay provisions if the header is isolated) (Table 3 to subpart IIII of part 63).

The work practice standards in the 2003 Mercury Cell MACT required that facilities institute a floor level mercury vapor measurement program (See § 63.8192, "What work practice standards must I meet?", specifically paragraph (d)). Under this program, mercury vapor levels are periodically measured and compared to an action level of 0.05 mg/m<sup>3</sup>. The 2003 Mercury Cell MACT specified the actions to be taken when the action level is exceeded. If the action level was exceeded during any floor-level mercury vapor measurement evaluation, facilities were required to take specific actions to identify and correct the problem (§ 63.8192(d)(1) through (4)).

As an alternative to the full set of work practice standards (including the floor-level monitoring program), the 2003 Mercury Cell MACT included a compliance option to institute a cell room monitoring program (See § 63.8192, "What work practice standards must I meet?", specifically paragraph (g)). In this program, owners and operators continuously monitor the mercury concentrations in the upper portion of each cell room and take corrective actions as soon as practicable when a site-specific mercury vapor level is detected. The cell room monitoring program was not designed to be a continuous emissions monitoring system inasmuch as the results would be used only to determine relative changes in mercury vapor levels rather than compliance with a cell room emission or operating limit (68 FR 70922).

As part of the cell room monitoring program, the owner or operator was required to establish an action level for each cell room based on preliminary monitoring to determine normal baseline conditions (See § 63.8192, "What work practice standards must I meet?", specifically paragraph (g)(2)).

Once the action level(s) was established, continuous monitoring of the cell room was required during all periods of operation. If the action level was exceeded at anytime, actions to identify and correct the source of elevated mercury vapor were required to be initiated as soon as possible. If the elevated mercury vapor level was due to a maintenance activity, the owner or operator was required to ensure that all work practices related to that maintenance activity were followed. If a maintenance activity was not the cause, inspections and other actions were needed to identify and correct the cause of the elevated mercury vapor level. Owners and operators utilizing this cell room monitoring program option were required to develop site-specific cell room monitoring plans describing their monitoring system and quality assurance/quality control procedures that were to be used in their monitoring program (Table 5 to subpart IIII of part 63).

The 2003 Mercury Cell MACT established the requirement for owners and operators to routinely wash surfaces throughout the plant where liquid mercury could accumulate (See § 63.8192, "What work practice standards must I meet?", specifically paragraph (e)). Owners and operators were required to prepare and follow a written washdown plan detailing how and how often certain areas specified in the 2003 Mercury Cell MACT were to be washed down to remove any accumulations of liquid mercury (Table 7 to subpart IIII of part 63).

For new or reconstructed mercury cell chlor-alkali production facilities, the 2003 Mercury Cell MACT prohibited mercury emissions.

Several mercury cell plants have closed or converted to membrane cells since the promulgation of the 2003 Mercury Cell MACT. When these situations have occurred at plants with on-site thermal mercury recovery units, it has been common for these units to continue to operate to assist in the treatment of wastes associated with the shutdown/conversion. Under the applicability of the 2003 Mercury Cell MACT, these units are no longer an affected source after the chlorine production facility ceased operating. Although these mercury recovery units were required to continue to use controls as per their state permits, these proposed amendments would require any mercury recovery unit to continue to comply with the requirements of the Mercury Cell MACT for such units even after closure or conversion of the chlorine production facility, as long as

the mercury recovery unit continues to operate to recover mercury.

#### *D. Details of the Petition for Reconsideration*

On February 17, 2004, under section 307(d)(7)(B) of the Clean Air Act, the NRDC submitted to EPA an administrative petition asking us to reconsider the 2003 Mercury Cell MACT. NRDC and the Sierra Club also filed a petition for judicial review of the rule in the U.S. Court of Appeals for the DC Circuit (*NRDC v. Sierra Club v. EPA*, Civ. No. 04–1048). Underlying many of the issues raised in the petition for reconsideration was the uncertainty associated with the fugitive emission estimates used by EPA in the rulemaking. In particular, the NRDC had concerns over the inability of mercury cell plants to account for all the mercury added to their processes to replace mercury that leaves in products or wastes or leaves via air emissions. NRDC, along with a number of other concerned parties who submitted comments on the July 2002 proposed rule, believed that the majority of this “missing” or unaccounted mercury must be lost through fugitive emissions. They also contended that recognition of this asserted fact would cause EPA to change many of the decisions that had been made in developing and promulgating the 2003 Mercury Cell MACT. Specifically, NRDC raised the following five issues in its petition:

(1) EPA refused to establish a numeric emission standard for the cell room, choosing instead to develop a set of work practices designed to minimize emissions. NRDC argued that under Clean Air Act section 112(h) EPA is permitted to substitute work practices for emission limits only upon a finding that “it is not feasible \* \* \* to prescribe or enforce an emission standard.”

(2) EPA’s 2003 Mercury Cell MACT unreasonably backtracked from the work practices the Agency proposed. As part of the regulatory effort, EPA had surveyed the work practices used by facilities in the industry and concluded that the housekeeping activities that sources followed to comply with the part 61 Mercury NESHAP represented the MACT floor. The EPA then required these detailed housekeeping practices that were based upon the best levels of activity in the industry. But despite the results of its survey and findings, EPA made the work practices optional in the 2003 Mercury cell MACT, allowing facilities to choose not to do the housekeeping activities and to instead perform continuous monitoring. EPA then stated that “a comprehensive continuous cell room monitoring program should be sufficient to reduce fugitive mercury emissions from the cell room without imposing the overlapping requirements of the detailed work practices.”

(3) EPA failed to consider non-mercury technology as a beyond-the-floor MACT

control measure for existing sources even though eliminating the mercury cell process would totally eradicate mercury emissions and also would be cost-effective, based on NRDC’s expectations of the amount of fugitive mercury emissions from subject sources.

(4) EPA eliminated a 2,300 g/day limit on plant-wide mercury emissions that existed under the part 61 Mercury NESHAP. NRDC stated that doing so violated the CAA because the law generally prohibits the new emission standards under section 112 from weakening more stringent existing requirements.

(5) EPA inappropriately decided to create a subcategory of mercury cell plants within the chlorine production category.

In a letter dated April 8, 2004, EPA generally granted NRDC’s petition for reconsideration, and indicated we would respond in detail in a subsequent rulemaking action. In addition, in meetings between EPA staff and NRDC representatives, EPA agreed to address the uncertainty of EPA’s fugitive mercury emissions from this industry. The Court stayed the litigation while the Agency addressed the uncertainty issues, conducted additional testing, and reconsidered the rulemaking.

### **III. Summary of EPA’s Reconsideration and Proposed Amendments**

In this section, we describe actions that we undertook in support of the proposed reconsideration of the rule, especially as related to the issues raised by NRDC in its petition for reconsideration. We present our proposed conclusions and decisions in response to NRDC’s petition, and we summarize the rule amendments that we are proposing in today’s action, along with our estimate of the impacts of these amendments.

These proposed amendments would be applicable to affected facilities when the final rule amendments are published, with proposed compliance periods of 60 days for facilities that have complied with the 2003 Mercury Cell MACT by selecting the continuous cell room monitoring option of that rule, and 2 years for facilities that have complied with the 2003 Mercury Cell MACT by selecting the work practice option. Mercury recovery units at sites where mercury cells are closed or converted after the date that the final rule amendments are published would be required to comply with the requirements of the final amendments as long as they are in operation.

#### *A. What were the issues that EPA reconsidered, and what are EPA’s proposed responses?*

As discussed above in section (II)(D), NRDC’s petition listed five specific

issues. Our reconsideration of each of these issues is addressed below. First, however, we also present a discussion of another issue that we believe relates to much of NRDC’s petition: The magnitude of the fugitive mercury emissions from mercury cell chlor-alkali plants.

#### **1. Magnitude of Fugitive Mercury Emissions from Mercury Cell Chlor-alkali Plants**

It has been difficult to quantify fugitive mercury emissions from mercury cell chlor-alkali plants. During most of the time when the 2003 Mercury Cell MACT was being developed, we were aware of fewer than five mercury emissions studies conducted over the last 30 or more years in the U.S. and Europe that measured fugitive emissions from mercury cell plants. Two of these studies were conducted by EPA in the early 1970’s and formed the basis for the assumption of 1,300 g/day mercury cell room emissions of the part 61 Mercury NESHAP. During the development of the 2003 Mercury Cell MACT, EPA conducted a study at Olin Corporation’s mercury cell plant in Augusta, Georgia (hereafter called “Olin Georgia”), that provided an additional estimate of fugitive mercury emissions.

In the time period since mercury cell chlor-alkali plants were required to comply with the part 61 Mercury NESHAP, which was promulgated in April of 1973, we are not aware of any facility that conducted testing to demonstrate compliance with the cell room emission limitation of the part 61 Mercury NESHAP. Instead, all facilities carried out the set of approved design, maintenance, and housekeeping practices and assumed fugitive mercury emissions of 1,300 g/day, as was permitted by the part 61 NESHAP.

The sensitivity and concern over the actual levels of fugitive mercury emissions from the cell rooms was exacerbated by the inability of the industry to fully account for all the mercury that was added to the cells. In the preamble to the final 2003 Mercury Cell MACT (68 FR 70920), we stated the following: “Even with this decrease in consumption, significant mercury remains unaccounted for by the industry. The mercury releases reported to the air, water, and solid wastes in the 2000 Toxics Release Inventory (TRI) totaled around 14 tons. This leaves approximately 65 tons of consumed mercury that is not accounted for in the year 2000.” While industry representatives provided explanations for this discrepancy, they could not fully substantiate their theories.

Although we acknowledged the uncertainty in the accounting of all the mercury, we stated in the 2003 Mercury Cell MACT that no evidence has ever been provided to indicate that the unaccounted mercury is emitted to the atmosphere via fugitive emissions from the cell room or otherwise. In its petition for reconsideration and in other correspondence, NRDC cites information that it believes supports a conclusion that the unaccounted mercury is emitted from the cell room. However, NRDC did not address studies that have been conducted to measure fugitive mercury emissions from mercury cell plants that rebut that conclusion.

Historically, the highest daily emission rate reported for any cell room has been approximately 2,700 g/day for a plant operating in 1971, which was before the part 61 Mercury NESHAP was in effect. More recent studies show fugitive mercury emissions considerably lower than the 1,300 g/day assumption in the part 61 Mercury NESHAP. For example, a study in 1998 at the Holtrachem facility in Orrington, Maine, estimated a fugitive mercury emission rate between 85 and 304 g/day. A study in Sweden in 2001 estimated a daily fugitive emission rate of 252 g/day. While NRDC cites various peripheral aspects of the EPA study in 2000 study at Olin's Georgia mercury cell plant, NRDC does not discuss a primary conclusion of the test: That the facility was estimated to have an average fugitive mercury emission rate of 472 g/day.

While we were confident that the fugitive emissions from cell rooms were not at the very high levels estimated by NRDC (at several tons per year (tpy) per plant), we recognized that the body of fugitive mercury emissions data could be improved. Therefore, as part of our reconsideration of the 2003 Mercury Cell MACT, we collected additional information on fugitive mercury emissions from mercury cell chlor-alkali plants. The primary purpose of this effort was to address whether the fugitive emissions from a mercury cell chlor-alkali plant are on the order of magnitude of the historical assumption of 1,300 g/day, corresponding to 0.5 tons per year (tpy) per plant, or on the order of magnitude of the unaccounted for mercury in 2000, which would correspond to 3 to 5 tpy per plant, or at some other level.

In planning our information gathering efforts for this test program, we recognized that all of the previous studies were relatively short term. Fugitive mercury emissions from a mercury cell plant occur for numerous

reasons, with significant emission sources likely being leaking or malfunctioning equipment and maintenance activities that expose mercury normally enclosed in process equipment to the atmosphere. One noteworthy NRDC criticism of the Olin Georgia study was that no major "invasive" maintenance activities were performed during the testing. Therefore, in designing our new study, we collected data over a number of months during a wide range of operating conditions and during times when all major types of maintenance activities were conducted.

Consequently, as part of the reconsideration efforts for the 2003 Mercury Cell MACT, EPA sponsored a test program to address the issue of the magnitude of the fugitive mercury emissions at mercury cell chlor-alkali plants. We visited five mercury cell chlor-alkali plants to identify and evaluate the technical, logistical, and/or safety issues associated with the measurement of fugitive emissions from the mercury cell rooms as part of a test program. The result of these efforts was that we sponsored two emissions testing programs: One at the Olin mercury cell chlor-alkali plant in Charleston, Tennessee (hereafter called "Olin Tennessee"), to estimate mercury emissions from one of its three cell rooms; and the other at the Occidental Chemical mercury cell chlor-alkali plant in Muscle Shoals, Alabama (hereafter called "Occidental Alabama"), to estimate their total site mercury emissions. These testing programs are discussed in detail later in this notice.

In addition to these emissions measurements, we also collected mercury emissions data from the continuous mercury monitoring system installed at three mercury cell plants: The Occidental facility in Delaware City, Delaware (hereafter called "Occidental Delaware"); Occidental Alabama; and Olin Tennessee, which was also a site for the EPA emissions measurement tests. We also performed validation studies of the air flow measurement systems and mercury monitors at these three facilities.

In addition, we compared maintenance logs and mercury emissions data to establish the correlation, if any, between maintenance activities and mercury emissions using data from Occidental's facilities. And finally, we addressed the issue of significant sources of fugitive mercury emissions from outside the cell room from the data acquired at the EPA-sponsored total site emissions tests at Occidental Alabama.

The descriptions of the emissions testing and data gathering efforts are summarized below along with our estimates of fugitive mercury emissions derived from these studies. The full emissions test reports, two memoranda that summarize the test reports, validation reports, and summaries of the mercury monitoring system emissions data analyses can be found in the docket to this proposed rule (EPA-HQ-OAR-2004-0017), and were previously provided to NRDC and industry representatives.

#### a. Description of EPA-Sponsored Mercury Emissions Tests at Two Facilities

*Olin—Charleston, Tennessee.* This test was performed over a six-week period from August to October 2006 using a long-path ultraviolet differential optical absorption spectrometer (UV-DOAS) to continuously measure the mercury concentration in the ventilator and an optical scintillometer (anemometer) to measure the velocity. Emission estimates were reported for each 24-hour period. The test report can be found in the docket, item number EPA-HQ-OAR-2002-0017-0056.3.

The Olin Tennessee facility has three cell rooms installed adjacent to one another. The E510 cellroom (startup in 1962) is a simple rectangular design with two rows of cells. The E812 cell room (startup in 1968) is also a simple rectangular design with two rows of cells. In 1974, Olin added a third cell room with additional E812 cells just south of the existing E812 cell room. A central control area was installed between the E510 and E812 cell rooms. In addition, an elevator and computer equipment area was installed between the two original plants. The area between the original E812 cells and the E812 10-cell Expansion is fully open. Each of the three cell rooms has a full length, natural draft ventilator mounted on the roof. Fans have been installed at the cell floor level around the perimeter of the E510 and E812 cell rooms to enhance cool air flow in key work areas. In addition, high velocity fans were installed near the central control area to aid air movement in "dead zones" created by the control area walls. There are no exhaust fans in any of the cell rooms.

Logistical and cost considerations resulted in the E510 cell room being selected for the EPA test. Continuously measuring the mercury emissions from more than one ventilator simultaneously was not practical, based on the limited availability of equipment and the complexities related to the operation of a number of highly sophisticated

measurement devices. The small size of the E812 Expansion cell room excluded it from consideration, and the complicated flow patterns between the E812 and E812 Expansion rooms would have made it very difficult to account for all the associated uncertainties using only one monitor. The configuration of the E510 cell room, the relatively straightforward air flow pattern, and the structure of the ventilator (which allowed easy access and a clear path for the beams) made it the obvious choice for the test program to optimize our ability to obtain the most reliable data.

*Occidental—Muscle Shoals, Alabama.* This test was conducted over 53 days, from September 21, 2006, through November 12, 2006, to measure total site mercury emissions. For this study, the “total site” included emissions via the cell room ventilation system, the stacks/point sources (thermal mercury recovery unit vent, hydrogen byproduct vent, end-box ventilation vent), and any fugitives that occurred outside of the cell room in adjacent process areas. The measurement approach used a Vertical Radial Plume Mapping (VRPM) measurement configuration employing three open-path UV-DOAS instruments for elemental mercury concentration measurements, in conjunction with multipoint ground level mercury measurements with a Lumex mercury analyzer. The total site mercury emissions were estimated using these concentration measurements and meteorological data (e.g., wind speed, wind direction).

The measurement systems operated on a 24 hour, 7 day per week basis for the 53-day campaign. The 3-beam VRPM configuration used to estimate elemental mercury emissions from the facility was located at a fixed position and fixed orientation on site for the duration of the project. Calculations of mercury flux through the VRPM plane were conducted only when specific data quality indicators involving wind speed, wind direction, path averaged concentration ratios and instrument operation were met. During the 53-day emissions test program, VRPM mercury flux values were able to be calculated for 23 days. Data were reported as daily (24 hour) emission values that were extrapolated from rolling 20-minute averages calculated every four minutes. A total of 1,170 mercury emission flux estimates were produced during the 23 days. The test report can be found in the docket, item number EPA-HQ-OAR-2002-0017-0056.5.

The cell room at the now closed Occidental Alabama plant was a rectangular building measuring 260 feet by 357 feet. The cell room consisted of

two rows of cells broken into four sections. The cell room took up half of a larger building, with a wall separating the cell room from the other half of the building that was used for equipment storage. The peak of the roof was over the wall separating the cell room from the other side of the building. The ventilation for the cell room consisted of both induced and forced draft fans. There were 43 forced-draft fans positioned on the side wall of the building pushing air towards the center of the building. There were two rows of induced-draft fans on the roof of the cell building. One row, containing 33 fans, was directly over the center of the two rows of cells. The other row, which contained 32 fans, was at the peak of the roof. The result was that the building was constantly under a slightly negative pressure.

#### b. EPA Validations of Mercury Monitoring Systems in Cell Rooms of Mercury Chlor-Alkali Plants

During the time we were planning the testing programs to estimate fugitive mercury emissions via an EPA-sponsored test program, the mercury cell chlor-alkali industry was undertaking its own long-term mercury emissions estimation efforts. Two Occidental mercury cell plants (Delaware and Alabama) installed mercury monitoring systems in their cell rooms in 2005, and the Olin Tennessee facility installed a mercury monitoring system in 2006. The plants used these systems to identify and correct mercury emission episodes in accordance with the alternative cell room monitoring program of the 2003 Mercury Cell MACT. Specifically, the facilities monitored physical and chemical parameters in the cell room, such as air flow and mercury concentration, that allowed the continuous estimation of the relative mass of mercury emissions leaving the cell room. Since these plants had already installed and were currently running their mercury monitoring systems, we included the collection and evaluation of data from these systems in our data gathering program. The overall goal of our validation program was to provide a qualitative assessment of the mercury monitoring systems at these three facilities.

There were three specific objectives of the EPA validation studies. The first objective was to verify that facility data processing and archiving were being performed correctly. This was accomplished through comparison of facility data with independently calculated values for elemental mercury mass emission rates. These independent

calculations utilized the same equations and raw input data as the company data systems. The second objective was to establish a confidence level for the accuracy of the measured elemental mercury concentrations. To accomplish this, a systems assessment was performed using calibration standards to challenge the mercury analyzer with a known concentration of mercury and to compare the analysis results with the certified concentration of the calibration standard. The goal of this assessment was an evaluation of short-term operation of the elemental mercury analyzer and effectiveness of routine maintenance and calibration activities that may impact long-term operation of the instrument. The third objective was to establish a confidence level associated with the flow determinations. Since each cell room has a unique ventilation system, this flow determination validation was done somewhat differently for each mercury monitoring system.

The following are descriptions of the mercury monitoring system at each facility and the results of the corresponding validation studies. The final reports for the validation program at the two Occidental facilities can be found in the docket to this rule (see docket items EPA-HQ-OAR-2002-0017-0057 and 0017-0058). The validation tests performed at Olin's Tennessee facility are included within the emissions test report described above (see docket item number EPA-HQ-OAR-2002-0017-0056.3).

*Occidental—Delaware City, Delaware.* Validation tests were performed by EPA at Occidental's now closed facility in Delaware the weeks of August 22, 2005, and September 9, 2005. The cell room at the Delaware City Plant was a rectangular building measuring 352 feet by 140 feet. The cell room consisted of two independent circuits, and each circuit was broken into two sections, resulting in four quadrants. The air flow in the cell room was via natural convection; there were no fans to provide either induced or forced draft air flow. During the summer months, approximately 40 percent of the sides on the lengthwise span were removed to improve ventilation. There were two rows of roof ventilators. Each ventilator was in two discrete sections for a total of four sections (corresponding to the four quadrants of the cell room).

The mercury monitoring system at the Occidental Delaware facility was a Mercury Monitoring System Model MMS-16 analyzer manufactured by Mercury Instruments GmbH Analytical Instruments in Germany. It collects samples from 16 points and analyzes

them for elemental mercury using a Model VM-3000 ultraviolet absorption analyzer. The mercury monitoring system takes one sample per minute, meaning that a sample is taken from each point once every 16 minutes. The sampling sequence is established so that a sample is taken from each quadrant once every four minutes. The flow rate for the building is estimated using a convective air flow model. The inputs to this model are atmospheric and ridge vent temperatures (which are continuously monitored), intake and discharge areas, and stack height.

The validation of the Occidental Delaware mercury monitoring system confirmed the accuracy of the data collection, calculation, and archiving system. With regard to the data quality of the mercury analyzer, mercury calibration accuracy results for the Delaware City instrument were 20 percent and 10 percent for the mid- and high-range calibration standards, respectively. Specifically, the analyzer reported a concentration of 8 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) for the 10  $\mu\text{g}/\text{m}^3$  standard and a concentration of 45  $\mu\text{g}/\text{m}^3$  for the 50  $\mu\text{g}/\text{m}^3$  standard. These results, along with the line integrity test results, suggest that the high range calibration of this instrument was offset in a negative direction.

A qualitative assessment of the accuracy of the Delaware City facility's approach to flow estimation was made with independent, on-site, flow measurements using a vane anemometer at the roof vents. These measurements, covering multiple sampling points, were averaged and compared to the average air flow determined using the convective flow model equations used to estimate the flow. This evaluation showed that the difference between the anemometer and convective flow model methods was 29 percent, with the convective flow model reporting a higher value than the anemometer tests.

*Occidental—Muscle Shoals, Alabama.* Validation tests were performed by EPA at Occidental Alabama the week of September 12, 2005. The mercury monitoring system at this facility was a Mercury Monitoring System Model MMS-16 analyzer manufactured by Mercury Instruments GmbH Analytical Instruments in Germany. The elemental mercury concentration is measured using a Model VM-3000 ultraviolet absorption analyzer. The mercury monitoring system collects samples from 65 points (at the inlet to each induced draft fan) and combines them in groups of three or four to provide a representative profile of the cell room in a 20 point sample array. The mercury

monitoring system takes one sample per minute, meaning that a sample is taken from each point once every 20 minutes. We previously described the cell room at Occidental Alabama, above.

To estimate the flow rate from the cell room, Occidental tested each fan to determine the flow rate at standard conditions and to correct the actual flow rate based on continuous monitoring of temperature, pressure, and humidity. The assessment of the accuracy of the Muscle Shoals facility's flow estimation procedure was made with independent, on-site, flow measurements at each of the 65 fan outlets. The total flow through all 65 fans was measured at five points within the fan exhaust area using an anemometer. The exhaust flow from each fan was determined by averaging these five flow values. Total flow from the cell room was determined by subsequently summing the flow from each fan during the test period. The difference between the anemometer and fan flow model methods was slightly more than 7 percent, with the exhaust fan model reporting a higher value than the anemometer validation tests.

The validation of the Occidental Alabama continuous mercury monitoring system confirmed the accuracy of the data collection, calculation, and archiving system of the facility. The mercury calibration accuracy results for the Muscle Shoals facility instruments were 4.0 percent and 0.2 percent, for the mid- and high-range calibration standards, respectively. These results indicate that the Muscle Shoals mercury analyzer was in good operating condition with no apparent calibration problems at the time of the validation test.

*Olin—Charleston, Tennessee.* Validation tests were performed by EPA at the Olin Tennessee facility during the month of September 2006. We previously described the cell rooms at the Olin Tennessee plant, above. This facility has two separate mercury monitoring systems: One for the E510 cell room and one for the E812/E812 Expansion rooms. These mercury monitoring systems are Mercury Monitoring System Model MMS-16 analyzers manufactured by Mercury Instruments GmbH Analytical Instruments in Germany. The mercury monitoring system collect samples from individual points and analyze them for elemental mercury using a Model VM-3000 ultraviolet absorption analyzer. In each of the cell rooms, there are five sampling points evenly spaced along the ventilators. In addition to the sample points in the ventilators (five for the E510 system and ten for the E812/812 Expansion system), each mercury

monitoring system has one sample point dedicated to continuously measuring mercury for point sources subject to the 2003 Mercury Cell MACT, and one point used for calibration. Each point is sampled for one minute and the concentration is held and used in calculating the overall cell room average concentration until the point is sampled in the next cycle. Hourly and daily rolling averages are then calculated and stored. The flow rates for the cell rooms are estimated separately using a convective air flow model. The inputs to this model are atmospheric and ridge vent temperatures (which are continuously monitored), intake and discharge areas, discharge height, and fans on/off operation.

The mercury calibration accuracy results for the instrument in the E510 cell room were approximately 8 percent and 19 percent for the mid and high range calibration standards, respectively. For the E812/812 Expansion System, the results were approximately 5 percent and 20 percent for the mid and high range calibration standards, respectively. Both analyzers indicated higher concentrations than the certified calibration standards provided by the manufacturer.

Manual flow measurements were made in each of the cell room roof vents using a vane anemometer. These manual flow measurements were not compared directly with flow rates estimate by Olin's convective flow model. The accuracy of the facility's model was assessed in a two-step process. The manual measurements for the E510 cell room were first compared with the air flow measurements estimated using the optical anemometer in the EPA test, and then compared with the estimates from the Olin flow model. The accuracy determination between the optical flow monitor and the manual flow measurements was slightly lower than 10 percent. The flow rate estimated using the Olin flow model was approximately 5 percent higher than the flow rate measured by the optical flow monitor over the entire testing period.

#### c. Analyses of Cell Room Maintenance Logs and Mercury Emissions Data

Occidental also provided detailed maintenance records for the April through November 2005 (Delaware) and August 2005 through January 2006 (Alabama) time periods in addition to their emissions data. They also provided production data and details of "alarm events" for this period, where an alarm event was a situation in which the monitoring system recorded a mercury concentration above established action levels. When such an alarm occurred,

Occidental personnel were dispatched to the area of the cell room where the elevated concentration was detected to identify the specific cause and to take corrective actions. We performed an analysis of the effect of maintenance activities, alarm events, production levels, and ambient conditions on daily fugitive mercury emission levels. While we recognize that maintenance activities and alarm events can result in short-term spikes in emissions, our analyses of the data did not show any correlation between daily fugitive mercury emissions and these events. The only factor that showed any correlation, albeit weak, to daily emissions was the ambient temperature. The report of these analyses can be found in the docket.

**d. No Significant Fugitive Sources of Mercury From Outside the Cell Room**

In addition to obtaining total site emission estimates at Occidental Alabama, we attempted to ascertain whether fugitive sources outside of the cell room were contributors of measurable emissions by performing a material balance on the contributors to the total site emissions and solving for the outside fugitive component.

The "total site" mercury emissions for this study included emissions via the cell room ventilation system, the stacks/point sources (thermal mercury recovery unit vent, hydrogen by-product vent, end-box ventilation vent), and any fugitives that occurred outside of the cell room in adjacent process areas. From a material balance analysis of these data, we concluded that fugitive sources outside the cell room do not contribute measurable mercury emissions when compared to fugitive emissions from the cell room (see docket items EPA-HQ-OAR-2002-0017-0056.5 and 0017-0056.6).

**e. New EPA Fugitive Mercury Emission Estimates for Cell Rooms**

We used eight separate fugitive mercury emission data sets from three different mercury cell chlor-alkali plants in 2005 and 2006 to produce a new estimate of fugitive mercury emissions from cell rooms. The time periods of data collection range from 6 weeks to over 30 weeks, all of which provided an opportunity to include a complete range of maintenance activities and operating conditions. Two of the data sets were generated via EPA-sponsored test programs and the others were collected from cell room mercury monitoring systems that were validated by EPA. Summaries of the data sets can be found in the docket.

The daily mercury emission rates extrapolated from these data sets ranged from around 20 to 1,300 g/day per facility. The average daily emission rates ranged from around 420 g/day to just under 500 g/day per facility, with the mean of these average values being slightly less than 450 g/day per facility.

The purpose of this effort was to address whether the fugitive emissions from a mercury cell chlor-alkali plant are on the order of magnitude of the historical assumption of 1,300 g/day (or 0.5 tpy per plant) or on the order of magnitude of the unaccounted for mercury in 2000 (3 to 5 tpy per plant, which equates to around 10,000 g/day). The information we obtained shows that fugitive emissions are on the order of magnitude of the historical assumption of 1,300 g/day. There was no evidence obtained during any of the studies that indicated that fugitive mercury emissions were at levels higher than 1,300 g/day. In addition, all of the studies that produced these data were of sufficient duration to encompass all types of maintenance activities, including the major "invasive" procedures that were not conducted during the earlier test at the Olin Georgia facility. The length of these studies was also sufficient to include emissions from a variety of process upsets, such as: Liquid mercury spills, leaking cells, and other process equipment, and other process upsets (see docket items EPA-HQ-OAR-2002-0017-0021 and 0017-0029).

The results of the almost one million dollar study of fugitive emissions from mercury cell chlor-alkali plants sponsored by EPA enables us to conclude that the levels of fugitive emissions for mercury chlor-alkali plants are much closer to the assumed emissions in the part 61 Mercury NESHAP, of 1,300 g/day/plant (around 0.5 tons/yr/plant) than the levels assumed by NRDC (3 to 5 tons/yr/plant). The results of this study suggest that the emissions are routinely less than half of the 1,300 g/day level, with overall fugitive emissions from the five operating facilities estimated at less than 1 ton per year of mercury.

**f. Conclusions on the Use of Mercury Monitoring Systems as a Work Practice Tool**

In the data we obtained or examined, we saw discrepancies between the measured concentrations and the calibrated standards, and differences between the flow rates estimated by the cell room systems and those estimated by anemometers (manual or optical), as summarized above. The differences for the measurement of the mercury

concentration were as high as 20 percent, and the differences in the measurements for the flow rates were as high as 29 percent. Such differences lead us to conclude that these systems would not be suitable to accurately demonstrate compliance with a numeric standard, because of the potential for errors in compliance determinations due to uncertainties in the measurement techniques. However, since the goal of this effort was to assess the order of magnitude of fugitive mercury emissions from the cell room, we concluded that data from these systems were appropriate for that purpose since the differences were well within an order of magnitude.

Our observations at these three plants during the validation programs resulted in recognition of the ability of the mercury monitoring system to be used as a work practice tool to reduce fugitive emissions in the cell room. When the 2003 Mercury Cell MACT was promulgated, we thought that the mercury monitoring system could help identify problems before significant emission events occurred. However, at that time no mercury cell plant in the United States had installed such technology so there was no opportunity to assess their effectiveness. Now, with data from the three plants described above, we can conclusively say that the mercury monitoring systems aid in the identification and correction of fugitive emission problems and help plants refine their standard operating procedures and work practices to further reduce emissions. Therefore, we believe that the use of such systems as a tool to determine the effectiveness of work practices has been demonstrated. We estimate that the cost of installing a system in a cell room is about \$120,000, which equates to a total annual cost (including annualized capital cost and operation and maintenance costs) of slightly over \$25,000 per year. We believe that in the long term these systems will result in continued decreases in fugitive mercury emissions as plants will be able to identify emission-reducing improvements in their processes and practices. Therefore, we are proposing to require all mercury cell chlor-alkali plants to install cell room mercury monitoring systems and to develop a cell room monitoring plan.

**g. Estimate of the Efficiency of the Cell Room Monitoring Program To Reduce Fugitive Emissions**

In the 2003 Mercury Cell MACT, we noted our inability at that time to quantify the emission effects of adopting the cell room work practices, a point also noted by NRDC in its petition for



reconsideration. However, we are now able to better estimate the emissions reductions achieved by the cell room monitoring program and work practices for these amendments using the results of the test programs and other information gathering efforts, as described above.

We estimated that baseline mercury emissions prior to the 2003 Mercury Cell MACT were 1,300 g/day per facility (68 FR 70923). This equated to nationwide pre-MACT baseline fugitive emissions of 4.7 tpy. The test program data suggest that on average, the fugitive mercury emissions from a single facility are approximately 450 g/day, which equates to nationwide emissions of 0.9 tpy. Therefore, we estimate that the combination of the work practices promulgated in the 2003 Mercury Cell MACT combined with cell room monitoring reduces fugitive mercury emissions from a single facility by over 65 percent from the pre-MACT levels. On a nationwide basis, we estimate that fugitive mercury emissions have been reduced by approximately 86 percent, including plant closures.

The point source emissions (from hydrogen vents, end-box ventilation systems, and mercury recovery units) from the five mercury cell plants expected to be in operation after these amendments are finalized are around 0.4 tons/yr total. Therefore, our estimate of the nationwide total mercury emissions from all emission sources (point and fugitive) at these plants is around 1.3 tons/yr.

## 2. Elimination of Uncertainty Regarding the "Missing" Mercury

Mercury is not consumed in the mercury cell chlor-alkali plant process. Therefore, in theory, the amount of mercury that is added to the process should be equal to the amount of mercury that leaves the process in either air, water, or waste pathways. In other words, the mercury going into the system should approximately equal the mercury leaving the system, where the "system" is the entire plant. Historically, the industry has had a difficult time closing this mercury balance, as the amount of mercury added has exceeded the amount measured in the wastes, wastewater, products, and air leaving the plant. This difference has been referred to as the "missing" or unaccounted mercury. The primary basis for NRDC's estimates of fugitive mercury emissions from mercury cell chlor-alkali plants was the 65 tons of mercury that could not be fully accounted for by the industry at that time in their plant-wide inventories (in 2000).

The EPA emissions testing and data gathering efforts discussed above did not independently resolve the unaccounted mercury issue. However, since promulgation of the 2003 Mercury Cell MACT, the level of mercury that is unaccounted for by the industry has diminished drastically. The industry reported a total of 7 tons of unaccounted for mercury in 2004, and 3 tons in 2005,<sup>a</sup> with the estimate for 2006 even lower.

This reduction in the unaccounted mercury is likely due to increased efforts by the affected industry to inventory and track mercury in their plants, rather than to large reductions in mercury being released to the air, water, or in wastes. During our visits to mercury cell plants since promulgation of the 2003 Mercury Cell MACT, we have developed a fuller understanding of the components of a plant-wide mercury balance.

One of the most significant improvements in estimating this balance has been in the estimation of the amount of mercury in the cells. Most plants now utilize a radioactive tracer method to estimate the mercury inventory in the cells. Previously, some plants did not use scientific methods to conduct an inventory of the mercury in the cells. The radioactive tracer method is accurate to around 1 percent. So, for a mercury cell plant that has about 300 tons of mercury in the cells, this error could cause the mercury balance to be inaccurate by about 3 tons. For plants that did not conduct a scientific inventory, their errors could result in significantly greater variability in the mercury inventory estimates for the mercury cells. If each of 10 plants had only factors of two errors in the accuracy of their mercury cell measurements, the effect could be 60 or more tons of unaccounted mercury for the cells alone.

Another area where significant improvement in the mercury balances has occurred is in estimating the amount of liquid mercury present in pipes and other process equipment. As plants perform maintenance on process equipment, they have measured the amount of mercury recovered and have developed accumulation factors that are now incorporated into the mercury balances procedures.

The 3 tons of unaccounted mercury reported in 2005 for the eight plants then in operation is, on average, approximately 750 pounds (lb) per plant. Significantly contributing to this

number are the uncertainties in the various measurement techniques used to develop the inventory. While the affected industry must continue to strive to account for every pound of mercury that enters their processes, the degree of uncertainty regarding the unaccounted mercury has been substantially reduced since the time of promulgation of the 2003 Mercury Cell MACT.

## 3. Emission Limitation for Cell Room

Two of the issues raised by NRDC in its petition for reconsideration are related to their objection that the 2003 Mercury Cell MACT did not include a numeric emission standard for fugitive emissions from the cell room. First, NRDC states that EPA failed to adequately justify that a numeric emission limitation was not feasible per the criteria prescribed in section 112(h) of the Clean Air Act (CAA). These criteria govern EPA's decisions to require a work practice standard (or a design, equipment, or operational standard) in lieu of a numerical standard under section 112. The CAA section 112(h)(1) provides that the EPA can prescribe, consistent with sections 112(d) or (f), a work practice if in the judgment of the Administrator it is not feasible to prescribe or enforce an emission standard. The CAA section 112(h)(2) then defines the phrase "not feasible to prescribe or enforce an emission standard" to mean either "(A) a hazardous air pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State or local law, or (B) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations." NRDC argued that EPA did not provide sufficient rationale that a numeric limit for the cell room is infeasible in order to support a work practice standard in lieu of a numeric standard. Rather, NRDC referred to the EPA test program at Olin's Georgia plant in 2000 as evidence that the technology is available to monitor the cell room. Second, NRDC states that EPA illegally eliminated the 2,300 g/day limit on plant-wide mercury emissions that existed under the part 61 Mercury NESHAP.

Both of NRDC's objections regard the 2003 Mercury Cell MACT's addressing of emissions from the cell rooms only through maintenance activities. NRDC noted in their petition that while EPA stated that we expected these maintenance activities would minimize

<sup>a</sup> "NINTH ANNUAL REPORT TO EPA for the Year 2005, May 15, 2006." <http://www.epa.gov/region5/air/mercury/9thcl2report.pdf>.

mercury emissions, we did not quantify the effect adopting these practices would have on the emissions.

In setting the work practice standards in the form of maintenance activities in the 2003 Mercury Cell MACT, we referred to section 112(h) of the CAA to provide clarification on how EPA must determine the feasibility of prescribing or enforcing an emission standard. NRDC claims that EPA failed to provide adequate justification that any of the section 112(h)(2) conditions were met, and therefore that we did not validly conclude that the establishment or enforcement of a numeric emission limitation is infeasible.

We continue to maintain that it is not feasible to prescribe or enforce an emission limitation for fugitive emissions from the cell room. We also maintain that fugitive emissions from mercury cells and associated equipment is a clear example of the type of situation to be addressed by the provisions of section 112(h). The various points leading to our opinion on the feasibility of establishing an emission standard, as well as our response to the claim that we inappropriately removed a previously existing standard, are discussed below.

**a. Mercury Emissions From Mercury Cells and Associated Equipment Cannot Be Emitted Through a Conveyance Designed and Constructed To Emit or Capture Mercury**

In its petition, NRDC discusses the "cell room" as if the room itself is the source of mercury emissions. This perception oversimplifies the actual situation. There are numerous potential sources of fugitive mercury emissions associated with mercury cells, ranging from the cells and decomposers to the hydrogen processing system to hundreds of pumps, valves, and connectors in the process piping. On average, cell rooms contain around 60 mercury cells, each with a decomposer. Fugitive mercury emissions primarily occur when the cells and the other process equipment develop leaks.

EPA has a long history of demonstrating that "equipment leaks" in the chemical industry are justifiably regulated by design, equipment, work practice, and operational standards in accordance with section 112(h). One of the best examples of EPA's regulation of equipment leaks is the Hazardous Organic NESHAP, or HON (40 CFR part 63, subpart H), which regulates equipment leaks from the synthetic organic chemical manufacturing industry through only work practices 57 FR at 62666 (December 31, 1992). A few examples of many other MACT

standards that use similar work practice programs to address equipment leaks include the Gasoline Distribution MACT (40 CFR part 63, subpart R) 59 FR at 5868 (February 8, 1994); the Generic MACT which covers numerous source categories (40 CFR part 63, subparts TT and UU) 63 FR at 55197 (October 14, 1998); and the Miscellaneous Coatings MACT (40 CFR part 63, subpart HHHHH) 67 FR at 16168 (April 4, 2002).

However, design, equipment, work practice, and operational standards are not unique to organic HAP emissions. Other examples include the MACT for Hydrogen Fluoride, which is covered under the Generic MACT cited above and the Coke Ovens Pushing, Quenching, and Battery Stacks MACT (40 CFR part 63, subpart CCCCC) 66 FR at 35338 (July 3, 2001).

We do not believe that the cell room building can be considered as a conveyance designed and constructed to emit or capture mercury. The primary purpose of the cell room building is not to capture mercury emissions, but rather, to protect the process equipment from the weather and other potentially damaging elements. Similarly, the primary purpose of the ventilation systems in the cell room is to remove the heat generated in the electrolytic process, and not to remove the mercury. As noted earlier, there are numerous sources of fugitive emission sources in the cell room, ranging from the large cells and decomposers to individual valves. In order to effectively emit and capture mercury emissions from these sources, separate enclosed conveyance systems would need to be designed and constructed for individual potential emission sources or for groups of potential emission sources. Even if construction of such enclosures was physically possible, it would severely limit access to process equipment, thus hindering plant personnel from performing maintenance. This could, in effect, result in increased fugitive emissions.

Therefore, due to the nature of the sources of fugitive emissions from mercury cells and associated equipment, we conclude that these emissions cannot be emitted through a conveyance designed and constructed to emit or capture mercury.

**b. The Application of Measurement Methodology to Fugitive Emission Sources From Mercury Cells and Associated Processes in Cell Rooms for Compliance Purposes is not Practicable due to Technological and Economic Limitations**

In the 2003 Mercury Cell MACT, we stated that our reason for establishing

work practices instead of numeric emission limits was based on factors associated with the practicality and feasibility of setting a limit against which compliance realistically can be measured and enforced. EPA cited three reasons for our conclusion in the 2003 Mercury Cell MACT:

(1) Mercury emission monitors have not been used in the past to monitor fugitive emissions at mercury cell chlor-alkali facilities for compliance demonstrations;

(2) Variability in the number and location of exhaust vents at these facilities affects the amount and potential variability of air moved through the cell rooms, thus affecting calculations of fugitive mass emission rates; and

(3) Variability of the cell room roof configurations within the industry affects the feasibility of using continuous mercury monitoring systems at each facility.

While NRDC did not directly refute these statements, it provided three specific points to support its view that emissions from cell rooms could be feasibly measured from a technological perspective: (1) Although EPA envisioned that chlor-alkali plants could install cell room mercury vapor monitoring to comply with the 2003 Mercury Cell MACT, EPA did not show why this monitoring could not also quantitatively measure mercury emissions from the cell room for a standard; (2) since all of the operating plants already conduct basic monitoring of the cell room in keeping with Occupational Safety and Health Administration (OSHA) standards for worker exposure to mercury, EPA should also be able to require testing for its own standards; and (3) EPA ignored and failed to take advantage of a substantial EPA monitoring initiative at the Olin Georgia mercury cell plant, launched in 2000, which demonstrated that a measurement program needed to support an emission limit can be feasibly applied to the cell room. According to NRDC, the mercury vapor monitoring program required by the 2003 Mercury cell MACT and the monitoring programs conducted by mercury cell plants to comply with OSHA standards are proof that a numeric standard is technically feasible.

We know that the two types of monitoring cited by NRDC can be used reliably to identify leaks and thereby reduce fugitive mercury emissions. The floor-level monitoring program of the 2003 Mercury Cell MACT, which is used to identify potential mercury leaks and other problems that could result in increased fugitive mercury emissions, is similar to the use of Method 21 to identify leaking equipment in volatile organic chemical service.

Method 21 requires that a portable instrument be used to detect volatile organic compound (VOC) leaks from individual sources such as pumps, valves, etc. This instrument, often called a “sniffer,” measures the VOC concentration. Concentrations above specified levels that are defined to constitute a leak result in a requirement for corrective action to repair the leak. Though Method 21 is an extremely useful method for identifying leaking equipment, it could not and has not ever been required to demonstrate compliance with a numerical emission standard. In fact, section 2.1 of Method 21 specifically states “This method is intended to locate and classify leaks only, and is not to be used as a direct measure of mass emission rate from individual sources.”

The OSHA worker safety program requires plants to measure mercury concentrations in areas where workers could be exposed to mercury vapor. According to OSHA standards, employee exposure to airborne mercury compounds may not exceed an 8-hour time-weighted average limit of 1 mg/10 M<sup>3</sup> (0.1 mg/M<sup>3</sup>). Mercury cell plants typically comply with this standard by periodically measuring the mercury concentration at selected points throughout the cell room at the floor level. If concentrations approach the exposure limit, workers are required to wear respirators to lessen their exposure in areas where the high concentrations were identified. However, these measurements of employee exposure to mercury vapor do not represent the mercury concentration from the entire cell room and cannot be linked to continuous compliance with a numeric standard.

The EPA test at Olin’s Georgia facility in 2000 not only provided insights into monitoring techniques that could be implemented at mercury cell plants to help reduce fugitive emissions, it also helped answer some of the questions regarding the magnitude of fugitive mercury emissions at mercury cell plants. This knowledge and experience were a key aspect of our conclusions that a cell room monitoring program could be an effective means of reducing fugitive emissions. The success of this test program also played a large role in moving the industry forward to develop and implement cell room monitoring programs that are proving to be valuable in minimizing potential mercury emission events in a manner not previously possible.

However, the Olin Georgia test program was not used to demonstrate the ability of the Olin Georgia plant, or any other facility, to comply with a

numeric emission standard. In the conclusions of the test report from the Olin Georgia tests, it was stated that “roof vent instrumentation may be a useful tool for process monitoring in some facilities to identify problems in the operation of the cells that may require corrective action.” In the report for the Olin Georgia study, it is further noted that cell room conditions changed rapidly, which affected their emissions measurements; therefore, mercury emission data collection worked best when it was taken over a short period of time. It was also stated in the Olin Georgia report that the mercury concentrations in the roof vent were not homogeneously stratified and the concentration of mercury was not consistent along the length of the ventilator.

We do not agree with NRDC that the success of the Olin Georgia tests can be extrapolated to the mercury chlor-alkali industry’s ability to quantitatively measure fugitive emissions from all mercury cell rooms for the purposes of an emission standard. We provide additional information on this subject, below.

*Olin Georgia Cell Room Configuration*—The Olin Georgia cell building is a single structure that is approximately 200 feet long and 100 feet wide. The peak of the building is around 50 feet tall, and there is a single ventilator that runs the entire length of the building at the peak. The building has two stories, with the bottom floor open to the atmosphere on three sides. The second floor, which contains the mercury cells and decomposers, has wall panels that can be opened or closed depending on ambient conditions. Ventilation occurs via natural convection. Therefore, in periods when ambient temperatures are higher and the sides are opened, the flow rate through the building increases significantly.

In EPA’s Olin Georgia study, the mercury concentration was measured by a UV-DOAS, and an optical scintillometer (anemometer) was used to measure the air flow rate from the cell room. A single beam from each of these instruments was shot along the path of the ventilator slightly above the “throat” of the ventilator. A preliminary hypothesis might be that concentration and flow measurements taken along this exit point could provide a “reasonable representation” of the emissions from the cell building. However, a “reasonable representation” to obtain an estimate of mercury emissions for monitoring purposes is not equivalent to an “exact measurement” for the purpose of demonstrating compliance with a numeric emission standard. There were

several aspects of the Olin Georgia study that prevent us from considering the measurement methodologies used in this study as methods to determine compliance, not the least of which is the potential adverse effect of high electromagnetic field on air flow measurement made with the current state-of art instrument operation. These include the variability of air flow due to the bottom floor being open to the atmosphere on three sides, and the second floor, which contains the mercury cells and decomposers, having wall panels that are open or closed depending on ambient conditions, with the ventilation occurring via natural convection, hence the inherent variability.

*Cell Room Configurations of Three Other Facilities in the Industry*—Prior to the Olin Georgia tests, EPA and the industry’s trade organization, the Chlorine Institute, worked together to examine the facilities in the industry to be able to select a mercury cell chlor-alkali plant that would provide the best opportunity for a testing program to be successful. Olin’s Georgia plant was a clear choice for this program, given the configuration of the cell room and the ventilation system. The cell rooms at many of the other operating mercury cell plants, however, were not nearly as conducive to accurate measurement of flow and concentration.

As the first example, Olin Tennessee has three cell rooms adjacent to one another in one cell building. At this facility, the bottom floor is largely open on all sides. Two of the cell rooms are simple rectangular designs with an enclosed space for control equipment between them. One of these cell rooms has wall panels that can be removed on three sides. The second of these cell rooms has removable panels on the ends, but is fully open to the third cell room on the side opposite the control equipment. The third cell room has another industrial process sharing the building at one end, and has removable panels on two of the walls. Each of the three cell rooms has a full length, natural draft ventilator mounted on the roof. Although the room ventilation is designed to allow the hot air to naturally flow out to the cool outside environment (convective), fans have been installed at the cell floor level around the perimeter of the first two cell rooms to move the cool air to flow in and around key work areas. In addition, high velocity fans were installed near the central control equipment space to aid air movement. There is also cross-mixing of air flow between the three cell rooms. Although we used one of the cell rooms for our 2006 monitoring study,

described in detail above, we rejected the other two rooms based on the same analysis that we used to choose the E510 room. The inability to accurately estimate air flow in two of these three cell rooms would be a barrier to quantitatively estimating a flow rate and in turn an emission rate for compliance purposes.

As another example, the cell room building at the Pioneer mercury cell chlor-alkali plant in St. Gabriel, Louisiana, has a rectangular shape, with the bottom floor basically open on all sides. The roof over the upper floor where the mercury cells are housed is double-pitched to produce two bays, with a full-length vent along each roof ridge that allows convective air flow out of the cell building. In addition, there are induced draft fans in each bay along the narrow (end) wall of the cell room to pull air out of the room. Therefore, the ventilation is a combination of convection and induced draft in a number of directions.

A third example is the ventilation for the cell room at ERCO's mercury cell chlor-alkali plant in Port Edwards, Wisconsin, which consists of three different types of vents on the cell room roof. Two natural convection ridge ventilators are located at the two roof peaks of the building. Each ridge is equipped with dampers. Six exhaust fans are located on the cell room roof on either side of the roof gutter running down the center of the building. The round opening for these exhaust fans is approximately six feet in diameter. Eight rectangular natural convection ventilators are also located on the roof, on either side of the roof gutter running down the center of the building, between the ridge ventilators and the exhaust fans. The windows and doors to the cell room are opened or closed as needed to control the temperature in the cell room. In the summertime nearly all the doors and windows are open, and in the wintertime they are nearly all shut. In addition, there are two adjoining buildings with openings to the cell room.

From the above descriptions of cell rooms at Olin Georgia and three other facilities in the industry, the single UV-DOAS and optical anemometer system employed in the roof vents at the Olin Georgia plant would not be sufficient to quantitatively measure mercury emissions from this facility or any other cell room for compliance with a standard. Specifically, with the natural drafts, numerous ridge ventilators and other discharge points from these cell rooms, it would not be feasible to configure a system using multiple instruments to accurately measure the

concentration and flow rate of the exhaust streams over all operating time periods to comply with an emission standard. The detailed cell room design information and test results described above for facilities in this industry supports our conclusion in the 2003 Mercury Cell MACT that it is not technologically feasible to accurately measure the mercury emissions from mercury cell rooms throughout the industry in a manner sufficient for compliance with an emission standard.

*Estimating Building Replacement Costs*—While this does not relate to identification of the MACT floor and, as discussed below, we do not believe it is practical to impose such a requirement as a beyond-floor requirement, for the purposes of this proposed rule we explored a scenario where all facilities would tear down their existing cell room structures and replace them with a design equivalent to Olin Georgia's. We chose this facility since it was used to provide short-term cell room mercury emission estimates that have been generally accepted as a good representation of the magnitude of facility cell room emissions during the tests, and was cited as an example by NRDC in its petition.

We estimate that the cost for such construction efforts could be in the range of \$10 to \$20 million per facility. Documentation of this analysis can be found in the docket. We conclude that this is not an economically feasible option. We also do not believe that an industry-wide construction effort of this type to be practical, given that we do not expect any difference in the emission reduction that would be achieved by a numeric standard as opposed to combination of a cell room monitoring program and work practices that would be required if we promulgated today's proposed amendments. Details of our cost estimate can be found in the docket.

c. Part 61 Mercury NESHAP Allowed Facilities to Assume Cell Room Emissions of 1,300 g/day and did not Require Compliance with an Emission Standard

With regard to the second objection raised by NRDC relating to the lack of a numeric standard (i.e., that EPA illegally eliminated the numeric emission limit for the cellroom in the part 61 Mercury NESHAP), NRDC stated that this long-existing regulation included a numeric emission standard that applied plant wide, which included the cell room. NRDC also stated in its petition that one alternative for demonstrating compliance with a standard such as that in the part 61

Mercury NESHAP is an EPA-approved emission test method, such as EPA Method 101 (part 61, Appendix B).

The part 61 Mercury NESHAP contained a plant-wide mercury emission limitation of 2,300 g/day, which included a 1,000 g/day limit for stack sources of mercury (end-box ventilation system and hydrogen vents). However, there was no other limit specified as such in the rule. The stack limit at 1,000 g/day and the total facility limit of 2,300 g/day effectively resulted in a 1,300 g/day default limit for fugitive mercury sources from the cell room by subtraction, but no such separate limit for fugitive emissions existed in the rule.

The part 61 Mercury NESHAP further required compliance tests using Methods 101 and 102 for the point sources. While the part 61 Mercury NESHAP did include testing provisions for cell room ventilation systems using Method 101, that rule also allowed sources to alternatively demonstrate compliance with the rule by using approved design, maintenance, and housekeeping practices. In this case, the part 61 Mercury NESHAP allowed facilities to assume that their cell room emissions were 1,300 g/day, without actually requiring them to demonstrate achievement of this level of emissions.

The part 61 Mercury NESHAP applied to mercury cell chlor-alkali plants for more than 30 years. During that time, we are not aware of a single facility that has demonstrated compliance with the rule by conducting a test of a cell room ventilation system and showing that fugitive emissions were in fact no higher than 1,300 g/day. This fact further supports our conclusions regarding the infeasibility of applying measurement methodology to fugitive emissions from the cell rooms for purposes of demonstrating compliance with a numeric limit.

Prior to the 2003 Mercury Cell MACT, all of the mercury cell chlor-alkali industry instituted the design, maintenance, and housekeeping practices in the part 61 Mercury NESHAP and used the default 1,300 g/day emissions assumption for fugitive mercury emissions from the cell room. For all practical purposes, the establishment of more detailed and more stringent MACT-level work practices in the 2003 Mercury Cell MACT was an improvement of the requirements used to comply with the part 61 Mercury NESHAP. This is evident in the findings of our testing and information gathering efforts discussed earlier, which showed cell room emission levels consistently lower than 1,300 g/day. As also discussed

previously, the average fugitive emission rate measured during the testing and other information gathering efforts was around 450 g/day. In 2006, the average reported mercury emissions from point sources averaged around 200 g/day, meaning that the overall plant average emission rate is on the order of around 650 g/day. A 2,300 g/day emission limit would not be representative of the average fugitive emissions level achieved by the best performing sources. In fact, a 2,300 g/day limit represents a level of emissions that is likely three or four times as high as the average emissions of the worst performing source. Accordingly, in our view the combination of the point source limits and work practice requirements in the 2003 Mercury Cell MACT is more stringent than the 2,300 g/day emission limitation in the part 61 Mercury NESHAP. Further, we believe the amendments proposed today further strengthen the fugitive emissions reduction program beyond both the part 61 NESHAP and the 2003 Mercury Cell MACT.

#### d. Conclusion Regarding the Lack of Emission Limitation for Cell Room

In conclusion, consistent with CAA section 112(h), we believe that we have established in the discussions above that it is not feasible to prescribe or enforce an emission standard in this case. There are two independent bases for this conclusion. First, consistent with CAA section 112(h)(2)(A), we have concluded that fugitive mercury emissions from a mercury cell chlor-alkali plant cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant. Second, consistent with CAA section 112(h)(2)(B), we have established that the application of measurement technology to mercury cell rooms is not practicable due to technological and economic limitations. Finally, we believe that the plant-wide emission limit from the part 61 Mercury NESHAP was a standard to which no mercury cell facility had ever demonstrated compliance by way of emissions testing, is not an enforceable standard today, and, more importantly, does not reflect the MACT level of emissions control required under CAA section 112(d)(3)(B). Therefore, we did not unlawfully remove any actual requirement of the part 61 Mercury NESHAP. Instead, the 2003 Mercury Cell MACT adopted a set of MACT-level work practice requirements under section 112(h) that are more stringent in terms of controlling fugitive mercury emissions than was allowed in the part 61 NESHAP.

We believe that the enhanced work practices and operational standards of today's proposed rule would be a more reasonable and effective method in reducing fugitive mercury emissions than inaccurate attempts to meet a numeric emissions limit. The 60 percent reduction in mercury emissions obtained by comparing the assumed part 61 Mercury NESHAP emission levels for the cell rooms to the measured post-2003 Mercury Cell MACT emissions levels, as noted above, have shown that work practices alone are effective. The work practices that would be required in today's proposed amendments would allow sources to spend their time and efforts identifying and correcting problems rather than attempting to perform testing to determine compliance with an emissions limit which would not provide representative data. The detailed documentation of the work practices during the setting of the action level we are proposing in today's rule would also ensure that the lowest emissions levels are maintained through the year. For these reasons, the effectiveness of today's proposed amendments is not compromised by the absence of a numeric emission limit for fugitive emissions from the cell room.

#### 4. Combining the Monitoring Program with Work Practices

Section 63.8192 of the 2003 Mercury Cell MACT, "What work practices standards must I meet?", allows facilities to institute a cell room monitoring program to continuously monitor the mercury vapor concentration in the upper portion of each cell room as an alternative to work practice standards. One of the objections raised by NRDC was that this provision backtracked from the Agency's proposed work practice standards. NRDC pointed out that in the 2003 Mercury Cell MACT, EPA concluded that the housekeeping activities that facilities in the industry follow to comply with the part 61 mercury NESHAP represented the MACT floor and that requiring practices based upon the most detailed activities in the industry (i.e., "beyond-the-floor" practices) was justified. But NRDC was concerned because the work practices in the 2003 Mercury Cell MACT were optional if facilities chose to do continuous monitoring and, therefore, this option would allow sources to avoid conducting activities that represent the MACT floor. NRDC argued that this was a violation of section 112(d)(3) of the CAA, which requires all facilities to meet the MACT floor.

We believe that facilities should continue to perform housekeeping

activities when the action level for the cell room monitoring program is established. The facilities that have chosen to implement the cell room monitoring program have continued to perform the housekeeping activities. Since we know that there is benefit to doing both the monitoring and the work practices, we are proposing to amend the 2003 Mercury Cell MACT to require both a cell room monitoring program and work practice standards. This should remove the basis for NRDC's objection to the 2003 Mercury Cell MACT having made the work practice requirements optional. Because it is our intention that the primary focus of the facility should be towards finding and correcting leaks quickly, which directly results in emission reductions, and we believe the level of recordkeeping for the routine work practices in the 2003 Mercury Cell MACT detracts from the work practice efforts, we are reducing the burden of paperwork for the work practices, except during the setting of the action level. Therefore, the amendments proposed today would reduce the day-to-day recordkeeping provisions associated with the work practices and would instead include a requirement for weekly "checklists" certifying that the work practices are being performed.

The proposed amendments would add the requirements for detailed records of work practices during the semi-annual period of 14 to 30 days when the action level is established. Because we are proposing to require both work practice measures and a cell room monitoring program, we believe that a reduction in day-to-day recordkeeping will not diminish the effectiveness of the cell room fugitive emission reduction program.

As part of the proposed amendments, we would eliminate the floor-level monitoring program required in the 2003 Mercury Cell MACT for facilities that chose the work practice option since it would be redundant and a less effective alternative to the cell room monitoring program. The cell room monitoring program accomplishes the same purpose, except that it requires continuous monitoring of the mercury concentration. In addition to its continuous nature, the monitoring is also required to be conducted in the upper portion of the cell room building. The floor-level program primarily identifies only leaking equipment at the floor level. By monitoring all the process equipment, the cell room monitoring program would detect elevated concentrations from any equipment in the cell room.

## 5. Other Monitoring Amendments

In addition to proposing to require all facilities to develop and implement a cell room monitoring program, we are proposing to amend some of the requirements of the existing cell room monitoring program as well as correcting errors from the 2003 Mercury Cell MACT. These proposed monitoring amendments are described below.

### a. Establishment of the cell-room monitoring action level

The cell-room monitoring action level of the 2003 Mercury Cell MACT was a concentration that set in motion a series of required procedures to identify and correct problems that could result in increased fugitive mercury emissions. To establish the action level, the 2003 Mercury Cell MACT required that the owner or operator collect cell room concentration data for the first 30 days following the compliance date and establish an action level at the 75th percentile of the data. As mercury cell chlor-alkali plants installed and began to operate these continuous mercury monitoring systems, we became aware of several aspects of these provisions that could be improved. First, we believe that the 75th percentile is not the appropriate level for the action level. When the action level is exceeded, the 2003 Mercury Cell MACT required that owners and operators take significant actions to identify and correct the situation causing the increased mercury concentration. Establishing the level at the 75th percentile resulted in the action level being exceeded approximately 25 percent of the time. We would prefer that plant resources be expended when there is a real problem that can impact mercury emissions (e.g., a leak in hydrogen piping, a seal failure on a decomposer, etc.), rather than to constantly investigate and document action level exceedences caused by normal process variations. Therefore, we are proposing that the action level be established at the 90th percentile of the data set. Since this level would be established during the performance and documentation of the work practices, we believe that an action level at 90 percent would be sufficient to ensure proper equipment operation.

We also have come to realize that ambient conditions (temperature, humidity, etc.), and the seasonal reconfiguration of the cell rooms can have a significant impact on the cell room concentration. Therefore, we are proposing that the facilities re-establish their action level at least once every six months. Due to the increased frequency

of action level determinations and the work practice documentation, we are reducing the minimum amount of time that plants must collect data to 14 days, although time periods up to 30 days can be used.

### b. Weekly Certification of Work Practice Inspections

Sources that elected to comply with the work practice standards in the 2003 Mercury Cell MACT were required to keep detailed records of each inspection. Sources that elected to comply with the cell room monitoring program were required to keep detailed records of actions taken whenever an action level is exceeded. We believe that if sources are required to comply with both the work practice provisions and the cell room monitoring program provisions, these levels of recordkeeping are not necessary. Therefore, we are proposing to eliminate the requirements for detailed records associated with the work practice inspections and instead we are proposing to require a weekly certification that all the required work practices are being conducted. We believe that it is still important that the facilities keep records of instances where elevated mercury concentrations are measured, along with records of the associated causes and corrective actions. Therefore, we are proposing to maintain the detailed recordkeeping requirements during the 14 to 30 days of setting the action level of the cell room monitors.

### c. Miscellaneous Measurement Amendments

*Detection limit for mercury emission monitor analyzers.* Paragraph (a)(2) of § 63.8242, "What are the installation, operation, and maintenance requirements for my continuous monitoring systems?," requires that mercury continuous emission monitor analyzers have a detector with the capability to detect a mercury concentration at or below 0.5 times the mercury concentration level measured during the performance test. Since promulgation of the 2003 Mercury Cell MACT, we determined that setting the analyzer detection capability in reference to the concentration level during the performance test could be problematic. We realized that a concentration of 0.5 times the mercury concentration could, in cases of low mercury concentrations, be infeasible for the monitoring devices on the market. Information available to us at this time shows that 0.1 µg/m<sup>3</sup> is the detection limit of commonly commercially available analyzers. We believe that analyzers with detection

limits at this level are more than sufficient to determine compliance with the emission limitations in the 2003 Mercury Cell MACT. Therefore, we are proposing to revise this paragraph to require a detector with the capability to detect a mercury concentration at or below 0.5 times the mercury concentration measured during the test, or 0.1 µg/m<sup>3</sup>, whichever is greater.

*Averaging period for mercury recovery unit compliance.* The 2003 Mercury Cell MACT is inconsistent as to whether the rule requires a daily average or an hourly average to determine continuous compliance with the emissions standard for mercury recovery units found at § 63.8190(a)(3) of § 63.8190 "What emission limitations must I meet?". Paragraph (b) of § 63.8243, "What equations and procedures must I use to demonstrate continuous compliance?", clearly indicates that this averaging period is daily: "You must calculate the daily average mercury concentration using Equation 2 \* \* \*". However, paragraph (b) of § 63.8246, "How do I demonstrate continuous compliance with the emission limitations and work practice standards?", states that for each mercury thermal recovery unit vent, "you must demonstrate continuous compliance with the applicable emission limit specified in § 63.8190(a)(3) by maintaining the outlet mercury hourly-average concentration no higher than the applicable limit."

It was our intention for compliance to be based on a daily average, as detailed below, and the inclusion of "hourly" in paragraph (b) of § 63.8246, "How do I demonstrate continuous compliance with the emission limitations and work practice standards?", was a drafting error. Therefore, we are proposing to correct this error by replacing "hourly" in § 63.8246(b) with "daily." In the proposal **Federal Register** notice for the 2003 Mercury Cell MACT (67 FR 44678, July 3, 2002), we clearly stated our intention when we summarized the requirements as follows:

"To continuously comply with the emission limit for each by-product hydrogen stream, end-box ventilation system vent, and mercury thermal recovery unit, we are proposing that each owner and operator would continuously monitor outlet elemental mercury concentration and compare the daily average results with a mercury concentration operating limit for the vent \* \* \*."

"Continuous compliance would be demonstrated by collecting outlet elemental mercury concentration data using a continuous mercury vapor monitor, calculating daily averages, and documenting that the calculated daily average values are no higher than established operating limits. Each daily average vent elemental mercury concentration greater than the established

operating limit would be considered a deviation.

#### 6. Creation of the Mercury Cell Chlor-Alkali Subcategory

As stated in the preamble to the final 2003 Mercury Cell MACT (68 FR 70905), we divided the chlorine production source category into two subcategories: (1) Mercury cell chlor-alkali plants and (2) chlorine production plants that do not rely upon mercury cells for chlorine production. In December 2003 (68 FR 70949), we issued our final decision to delete the subcategory of the chlorine production source category for chlorine production plants that do not utilize mercury cells to produce chlorine and caustic. This action was made under our authority in CAA section 112(c)(9)(B)(ii), and was not challenged in a petition for judicial review. Nor did anyone ask us to reconsider that action pursuant to CAA section 307(d)(7)(B). The objection raised by NRDC in its petition for reconsideration of the 2003 Mercury Cell MACT was that by subcategorizing mercury cell chlor-alkali plants, the worst industry performers are insulated from controls that could otherwise be driven by sources with no mercury emissions at all (i.e., the non-mercury chlorine producers), resulting in standards inconsistent with what NRDC believes is the MACT floor. According to NRDC, if the MACT floor for mercury emissions was determined for the chlorine production source category as a whole, the best-performing 12 percent of sources in the category would be mercury-free. NRDC stated that well over half of the chlorine production industry as a whole uses either membrane or diaphragm cell technology. Therefore, NRDC asserted that EPA is compelled by section 112(d)(3)(A) of the CAA to require sources to convert to a non-mercury process as MACT.

We have a long history of using subcategorization to appropriately differentiate between types of emissions and/or types of operations when analyzing whether air pollution control technology is feasible for groups of sources. As we stated in the preamble to the Initial List of Categories of Sources under section 112(c)(1) of the CAA Amendments of 1990, we have the authority to distinguish among classes, types, and sizes of sources in establishing emission standards (57 FR 31576, July 16, 1992). Subcategories, or subsets of similar emission sources within a source category, may be defined if technical differences in emissions characteristics, processes,

control device applicability, or opportunities for pollution prevention exist within the source category. This policy is supported by section 112(d)(1), the legislative history, our prior rulemakings, and judicial precedent.

EPA's broad authority to establish categories and subcategories of industry sources is firmly established, and has been recognized as entitled to substantial deference by the U.S. Court of Appeals for the D.C. Circuit and by the U.S. Supreme Court. *See, e.g., Davis County Solid Waste Mgmt v. EPA*, 101 F.3d 1395, 1405 (DC Cir. 1996) (EPA has "substantial discretion to create categories of sources for which standards must be promulgated"); *see also Lignite Energy Council v. EPA*, 198 F.3d 930, 933 (DC Cir. 1999) (upholding EPA's refusal to subdivide a category and noting that the Court was "[m]indful of the high degree of deference we must show to EPA's scientific judgment" on this question); *Chemical Mfrs. Ass'n v. EPA*, 470 U.S. 116, 131 (1985) ("the means used by EPA to define subcategories" under the Clean Water Act "are particularly persuasive cases for deference to the Agency's interpretation").

Under CAA section 112, that authority is subject only to the consideration that, "to the greatest extent practicable," categories and subcategories be established "consistent with" the source categories that EPA had established under other CAA programs (i.e., CAA section 111's "new source performance standards" (NSPS) and the "prevention of significant deterioration" (PSD) program). 42 U.S.C. 7412(c)(1). Having identified these general touchstones, however, Congress stated that "Nothing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as appropriate." 42 U.S.C. 7412(c)(1). Further, CAA section 112(d)(1) provides that EPA "may distinguish among classes, types, and sizes of sources within a category or subcategory." 42 U.S.C. 7412(d)(1). The legislative history confirms Congress' intent to give EPA broad discretion, noting that the CAA "provides discretionary authority to the Administrator to list categories or subcategories under section 112(c)," and that "it is vital to utilize subcategorization to prevent the cost-ineffective application of \* \* \* MACT." Statement of Rep. Bliley, Oct. 26, 1990, 1 *Legis. Hist.* at 1225-26.

Traditionally, EPA has established CAA section 112 subcategories for regulation based upon "factors such as process operations (type of process, raw materials, chemistry/formulation data,

associated equipment, and final products); emission characteristics (amount and type of HAP); control device applicability; and opportunities for pollution prevention." 64 FR 56493, 56494 (Oct. 20, 1999). These factors relate to the appropriate application and achievement of emission standards.

When EPA has declined to establish subcategories for CAA section 112 standards, we have done so because subcategorization would not affect the achievability of the standards, due to a lack of differences, for example, between sources' sizes or designs. (*See, for example, 64 FR 52828, 52859* in regard to declining to subcategorize hazardous waste incinerators because it would not result in standards that are more achievable.) On the other hand, where differences in design and operation between types of sources in a category clearly do affect the achievability of standards, EPA has reasonably subcategorized. As the DC Cir. has observed, "one legitimate basis for creating additional subcategories must be the interest in keeping the relation between 'achieved' and 'achievable' in accord with common sense and the reasonable meaning of the statute." *Sierra Club v. EPA*, 479 F.3d 875, 885 (DC Cir. 2007)(Williams, concurring)(remanding and vacating NESHAP for brick and ceramic kilns on other grounds).

One example of EPA's reasonable subcategorization that presented issues very similar to those raised in the chlorine production industry was in the NESHAP for primary copper smelters, 67 FR 40478 (June 12, 2002). There, the existing source MACT determination focused only on the emissions levels achieved by primary copper smelters using the relatively older batch copper converter process, while the more state of the art continuous flash converter process, due to its unique design and operation, achieved significantly more stringent levels, especially in terms of controlling process fugitive emissions. 67 FR at 40488. Commenters argued that EPA should have included the flash converter smelters in the existing source MACT analysis, but we concluded that batch converters and continuous flash converters were so distinct that it was necessary to place them in separate subcategories and to apply the rule's requirements only to the batch converter smelters. 67 FR at 40489. However, we did identify the continuous flash converter smelter as the "best controlled similar source," and thereby required that level of performance as new source MACT and prohibited construction of new batch converter smelters. 67 FR at 40489. While this issue was not



challenged in the subsequent litigation of the rule, it should be noted that the Court was fully aware of EPA's differentiation and remarked upon it without criticism. *Sierra Club v. EPA*, 353 F.3d 976, 981 (DC Cir. 2004) ("The rulemaking only concerned those primary copper smelters that use 'batch copper converters'"). We maintain that the creation of the mercury cell chlor-alkali chlorine production subcategory was warranted, was consistent with our prior practice (and, in particular, with the differentiated approach we took for primary copper smelters), and add the following in support of our conclusion.

With regard to differences in emission characteristics, the HAP emitted by mercury cell chlor-alkali processes and non-mercury cell chlor alkali processes are different, due to the fundamental differences in production processes and materials used at the two types of plants. While chlorine and hydrogen chloride are emitted by all chlor-alkali processes, mercury emissions are unique to the mercury cell subcategory. There are no mercury emissions from chlor-alkali plants that utilize electrolytic cells other than mercury cells, simply because those plants do not use or depend upon mercury as a material in their production processes. Therefore, it is not realistic to think of those plants as "controlling" mercury emissions levels, or of having any level of performance in "limiting" mercury emissions. It would likewise be unrealistic to base a MACT level of mercury emissions performance on such sources, where no mercury emissions at all are even possible and no actual control measures are, in fact, taken to limit mercury emissions. Rather, within the chlorine production source category, these plants represent a different process type, which does not provide information to assess the best levels of emissions control performance at source types where mercury emissions in fact occur.

Second, while chlorine and caustic are produced in all chlor-alkali processes via an electrolytic reaction, the processes are significantly different, apart from the basic difference in one subcategory using mercury and the other not using it. In addition, there are differences in the products, particularly the caustic products. The basic reaction that occurs in any chlor-alkali process is the electrolysis of brine, which contains sodium (or potassium) chloride in water, to form chlorine, hydrogen, and sodium (or potassium) hydroxide. However, the manner in which this reaction occurs and associated equipment (i.e., the "cells") is vastly different.

In diaphragm cells, a diaphragm separates the electrolytic cell into an anode compartment and a cathode compartment. Chlorine is formed in the anode compartment, and hydrogen and sodium (potassium) hydroxide are produced in the cathode compartment. Membrane cells have the same basic design, except that the compartments are separated by a membrane instead of a diaphragm. The primary difference is that the membrane only allows migration of sodium ions from the anode compartment to the cathode compartment, which results in a purer raw hydroxide product. While cell models differ, typical diaphragm cells are around 10 feet wide and 8 feet long. Membrane cells are of comparable size to diaphragm cells.

Mercury cells are considerably different from diaphragm and membrane cells. First, the reaction occurs in two distinct operations in two separate vessels. The electrolytic cell, which is typically around 50 feet long and 5 feet wide, produces chlorine gas. A separate decomposer, which is typically a cylindrical vessel around 5 feet tall and 3 feet in diameter, produces hydrogen gas and sodium (or potassium) hydroxide. The cell and decomposer are linked at the two ends by an inlet endbox and an outlet endbox.

While the basic products are the same between mercury cell and non-mercury cell processes, there are distinct differences in the quality of the products produced. The products from mercury cell processes include a concentrated (50 percent) hydroxide and very pure hydrogen and chlorine. In contrast, diaphragm cells produce very low concentration and impure hydroxide solutions that require expensive multi-stage evaporators to strengthen the solution, and the chlorine produced in membrane cells typically has a high oxygen content.

Therefore, we believe that there are significant differences in mercury cell and non-mercury cell processes. While there may be common aspects of auxiliary processes (e.g., chlorine liquefaction), the most basic aspect of chlor-alkali facilities (i.e., the electrolytic cells that produce the chlorine, hydrogen, and caustic) are dissimilar.

Finally, a comparison of mercury controls or pollution prevention opportunities between mercury cell processes and non-mercury cell processes is not possible since the non-mercury cell processes do not emit any mercury. We do not believe that it would be reasonable to impose the multi-million dollar conversion of a mercury cell process to a non-mercury

cell process as either a control device application or a pollution prevention procedure for this industry. In conclusion, we continue to maintain that non-mercury chlor-alkali chlorine production processes are separate processes from mercury cell chlor-alkali chlorine production and, specifically, are not methods of controlling mercury emissions.

#### 7. Consideration of Non-Mercury Chlor-Alkali Technology as a Beyond-The-Floor Control Requirement

Section 112(d)(3) of the Clean Air Act establishes the minimum requirements (i.e., the "floor") for MACT rules. Section 112(d)(2) requires us to consider alternatives that are more stringent than the MACT floor (i.e., "beyond-the-floor" options). In beyond-the-floor controls, we are required to consider the impacts that might result from imposing such controls, including cost, non-air quality health and environmental impacts, and energy requirements. In developing the 2003 Mercury Cell MACT, we considered beyond-the-floor alternatives for every emission source. In fact, each numerical emission limit for point sources, along with the work practices for fugitive sources, represents a beyond-the-floor level of control. In addition, mercury emissions from new mercury cell chlor-alkali production facilities were prohibited, as we identified as the "best controlled similar source" a non-mercury chlorine production facility, even though such a source is not in the same subcategory as existing mercury cell chlor-alkali facilities. This approach is similar to how we differentiated between batch converter primary copper smelters (which comprised the existing source subcategory) and continuous flash converter smelters (which were not in the regulated subcategory, but drove the new source floor) in the primary copper smelters MACT rulemaking, discussed above. See 67 FR 40478, 40488–89 (June 12, 2002).

In its petition NRDC argued that the 2003 Mercury Cell MACT does nothing to limit the use of mercury cell technology by existing chlor-alkali plants, and that the Agency ignored a known technique for reducing mercury emissions from this industry, namely, conversion to non-mercury processes. According to NRDC, requiring the industry to convert to a non-mercury process is cost-justified and would provide significant non-air quality benefits. In support of its argument, NRDC pointed to EPA's determination at proposal that a cost effectiveness of \$9,000 per pound was warranted for the beyond-the-floor control level for

control of mercury from by-product hydrogen streams without end-box ventilation systems. NRDC provided an analysis that indicated the cost effectiveness associated with conversion of existing mercury cell plants to non-mercury technology ranged from \$6,700 to \$13,400 per pound. NRDC noted that the \$9,000 per pound cost effectiveness, determined by the Agency to be warranted for by-product hydrogen streams without end-box ventilation systems was within this range calculated for conversion to nonmercury technology.

In response to NRDC's concerns that we did not evaluate the conversion of mercury cell chlor-alkali production plants to non-mercury technology, we performed an analysis to determine the capital and annual costs of this action. In performing the analysis, we used information from all readily available sources of information. A memorandum outlining this analysis, along with copies of all materials used, can be found in the docket for this rulemaking.

The EPA test program described above showed that the fugitive emissions from the mercury cell room averaged less than 450 g/day (or 360 pounds per year, lb/yr) per facility. Using this average figure for fugitive emissions, and 2004 TRI emissions data for point (stack) source emissions, we estimate that the average cost effectiveness associated with conversion to non-mercury technology would be approximately \$14,000 per pound, as opposed to the \$9,000 per pound used by NRDC as a benchmark, which is an increase of almost 60 percent.

Further, our analysis showed that the average capital cost of conversion for one mercury cell chlor-alkali facility in the U.S. was approximately \$68 million per plant. Nationwide, the capital cost was estimated to be nearly \$340 million. The average annualized facility costs for this conversion were estimated to be approximately \$7.5 million or \$38 million nationwide. This cost impact would be approximately 11 percent of revenues. In contrast, during the original rulemaking the total per-facility capital costs associated with controlling mercury from by-product hydrogen streams, end box ventilation systems, and mercury recovery units were estimated to be \$180,000, with the associated annual costs approximately \$160,000 per year. These values were estimated to be less than 0.3 percent of revenues. Therefore, we are proposing to reject conversion to non-mercury technology as a beyond-the-floor control requirement because of the high cost impact this forced conversion would impose on the facilities in the industry.

While we are not proposing to require mercury cell chlor-alkali plants to convert to mercury-free technology, we encourage owners and operators of the remaining mercury chlor-alkali plants to continue to explore this option. We also applaud those companies that have decided to convert their mercury cell plants processes to membrane cells voluntarily.

#### *B. What amendments are EPA proposing?*

The proposed rule amendments resulting from our reconsideration efforts, as per the rationale discussed in detail above in section III.A, are as follows:

(1) *Daily Work Practices*—These would be required for all facilities with weekly certification of the performance of these work practices;

(2) *Mercury Monitoring*—This would be required for all facilities, with the compliance periods for implementing this requirement, as described below, dependent upon whether the facility currently operates such a system for compliance with the 2003 Mercury Cell MACT;

(3) *Documenting Work Practices*—Detailed recordkeeping of the work practices would be required for the time period during the semi-annual setting and resetting of the action level of the continuous cell room monitors;

(4) *Setting the Continuous Monitoring Action Level*— This would be done for a minimum of 14 days and up to 30 days, at least every six months;

(5) *Action Level*—This would be set at 90th percentile of the data acquired during the re-setting time period(s).

(6) *Compliance Period for the Amendments*—All sources would be required to continue to comply with the 2003 Mercury Cell MACT until these new compliance dates, below:

(a) For sources that had previously elected to comply with the cell room monitoring program, we are proposing a compliance date 60 days from the date the final rule amendments appear in the **Federal Register**. This will allow facilities to plan and implement the work practice requirements and to gather data to establish a new action level in accordance with the revised requirements.

(b) For sources that did not opt to comply with the cell room monitoring program in the 2003 Mercury Cell MACT, we are proposing that they will have two years from the effective date of the final rule amendments to comply. We believe that this amount of time is necessary for these facilities to design, purchase, and install the necessary

monitoring equipment and to develop the various aspects of the program.

(7) *Correct Compliance Errors*—We are also proposing two changes to correct errors and to improve the compliance provisions of the rule, as follows:

(a) The detection limit for mercury continuous emission monitor analyzers would be changed to a capability to detect a mercury concentration at or below 0.5 times the mercury concentration measured during the test, or 0.1 µg/m<sup>3</sup>, whichever is greater; and

(b) The frequency of determining continuous compliance with the emissions standard for mercury recovery units would be changed to a daily average, as in paragraph (a)(3) of § 63.8190, "What emission limitations must I meet?", from an incorrect hourly average as in found at paragraph (b) of § 63.8246, "How do I demonstrate continuous compliance with the emission limitations and work practice standards?", in the 2003 Mercury Cell MACT.

(8) *Revise Work Plan Notification of Compliance Status*—In conjunction with these new requirements, we are also proposing to require that all plants submit a Revised Work Plan Notification of Compliance Status report 60 days after their compliance date. This report would include certifications that the work practices and cell room monitoring program are being followed. The cell room monitoring plan, including the initial action level and supporting data, would also be required to be submitted in this report. In order that the Revised Work Plan Notification of Compliance Status would be complete with all information related to the work practice standards, we are also proposing that the wash down plan and the mass of virgin mercury added to the cells for 2001 through 2006 be re-submitted. This Revised Work Practices Notification of Compliance Status report would not require any information related to compliance with the emission limitations in paragraph (a)(3) of § 63.8190, "What emission limitations must I meet?"

(9) *Applicability of Requirements for Thermal Recovery Units at Closed or Converted Facilities*—As several mercury cell chlor-alkali plants have closed or converted to membrane cells since the promulgation of the 2003 Mercury Cell MACT, the question has arisen whether the thermal recovery units that continue to operate in order to assist in the clean up of the site after the mercury cells have ceased to operate are subject to the emission limitations for thermal recovery units in § 63.8190,

“What emission limitations must I meet?” specifically paragraph (a)(3).

In answering the question “Am I subject to this subpart?”, paragraph § 63.8182(a) states, “You are subject to this subpart if you own or operate a mercury cell chlor-alkali plant.” In addressing “What parts of my plant does this subpart cover?”, § 63.8184(a) then states: “This subpart applies to each affected source at a plant site where chlorine and caustic are produced in mercury cells. This subpart applies to two types of affected sources: The mercury cell chlor-alkali production facility, as defined in paragraph (a)(1) of this section; and the mercury recovery facility, as defined in paragraph (a)(2) of this section.”<sup>b</sup>

Therefore, if a mercury recovery unit is being operated at a plant site that contains both an mercury cell chlor-alkali plant and an mercury recovery unit, the subpart clearly applies to both types of affected sources at the plant site. However, §§ 63.8182(a) and 63.8184(a) suggest that for the subpart to apply, there must be mercury cell-based production of chlorine and caustic occurring at the overall plant site. This is reinforced by the subpart’s later definitions of “mercury cell chlor-alkali plant” and “mercury recovery facility” located at § 63.8266, “What definitions apply to this subpart?”. This section defines the “mercury cell chlor-alkali plant” as all contiguous or adjoining property that is under common control, where mercury cells are used to manufacture product chlorine, product caustic, and by-product hydrogen and where mercury may be recovered from wastes. It then defines “mercury recovery facility” as consisting of all processes and associated operations needed for mercury recovery from wastes at a mercury cell chlor-alkali plant. In other words, for a mercury recovery unit to be subject to the rule, the rule currently reads that it must be functioning in support of an operating mercury cell chlor-alkali plant.

To be consistent with EPA’s mandate and intent in the 2003 Mercury Cell MACT to control mercury emissions from mercury chlor-alkali facilities, we believe that the mercury recovery units in this situation should continue to comply with the requirements, and therefore are proposing to amend the applicability provisions in § 63.8182, “Am I subject to this subpart?”, specifically paragraph (a) and in § 63.8184, “What parts of my plant does this subpart cover?”, specifically

paragraph (a); and the definitions of “mercury cell chlor-alkali plant” and “mercury recovery facility” in § 63.8266, “What definitions apply to this subpart?”, to make this clear. Mercury recovery units that are at plants where the mercury cells were shut down or converted prior to the date that the final rule is published would have one year to comply.

#### *C. What are the impacts of these proposed rule amendments?*

The proposed amendments would make the cell room monitoring program mandatory for all mercury cell chlor-alkali plants and would potentially impact all currently operating plants. However, the level of these impacts will vary depending on whether a plant previously elected to purchase and install a continuous mercury monitoring system in its cell room to comply with the cell room monitoring program alternative of the 2003 Mercury Cell MACT.

The only changes that plants that are currently complying via the cell room monitoring program alternative option would need to make would be associated with the implementation of the work practices. However, we believe that this will not result in any additional impacts to these plants since we believe that plants are already doing the work practices although they may not be keeping all the records associated with them. Therefore, we conclude that the net result is that there will be no appreciable impact on these plants. (At this time, all plants except one fit into this group.) We believe the burden of recordkeeping during setting the action level would be offset by the reduced recordkeeping associated with changing the action level from the 75 percentile to the proposed 90 percentile in these amendments.

For the single plant that has elected not to purchase, install, and operate a cell room monitoring system to comply via the cell room monitoring program alternative, there would be measurable cost impacts to purchase and install equipment. We estimate that the capital cost of a monitoring system is about \$120,000, and that the total annual cost (including annualized capital cost and operation and maintenance costs) is slightly more than \$25,000 per year. We believe that this value is a low percentage of the annual revenues for this facility (considerably less than 1 percent) and is a reasonable cost considering the nature of the emissions. Lacking the financial information about this one facility, we invite comment on our assumption that this capital cost is a reasonable percent of revenues. Any

labor costs associated with the additional recordkeeping requirements associated with the cell room monitoring program would be offset by the reduction in the recordkeeping and reporting that the plant is currently doing to comply with the work practice standards of the 2003 Mercury Cell MACT. This reduction in labor may have the additional benefit to offset the capital costs of the new equipment.

We do not believe that there will initially be substantial emission reductions associated with today’s amendments. However, we believe that as these plants continue to increase their knowledge of the causes of fugitive mercury emissions in the cell room through operation of the cell room monitoring program, mercury emissions will continue to steadily decrease.

The lack of fugitive emissions information prior to the 2003 Mercury Cell MACT promulgation did not allow us to estimate the mercury reductions associated with MACT work practices. As discussed above, we can now estimate that these practices reduce fugitive mercury emissions around 65 percent from the pre-MACT levels. On a nationwide basis, we estimate that fugitive mercury emissions have been reduced by approximately 86 percent from pre-MACT levels, including plant closures. Our estimate of the nationwide total mercury emissions from these plants is approximately 1 ton/yr. This represents a reduction of 88 percent from the pre-MACT levels allowed by the part 61 NESHAP, including point source and fugitive emissions, and plant closures.

## **IV. Statutory and Executive Order Reviews**

### *A. Executive Order 12866: Regulatory Planning and Review*

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 71735, October 3, 1993) and is therefore not subject to review under the Executive Order.

### *B. Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection request (ICR) document prepared by EPA has been assigned EPA ICR number 2046.04.

These proposed amendments result in changes to the information collection requirements in the regulation. This information is being collected to assure compliance with the regulation. The

<sup>b</sup> Sections 63.8184(a)(1) and (2) describe the affected source types and emissions points within a “plant site” subject to the rule.

required notifications, reports, and records are essential in determining compliance, and are required of all affected facilities. The recordkeeping and reporting requirements in this proposed rule are based on the requirements in EPA's NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information other than emissions data submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

The annual burden for this information collection averaged over the three years following promulgation of these amendments is estimated to be a total of 3,800 labor hours per year. The average annual reporting burden is 16 hours per response, with approximately 3 responses per facility for 5 respondents. The only capital/startup costs are associated with the installation of a cell room monitoring system at one facility, since we know that these systems are already in place at the other four facilities. The total capital/startup cost annualized over its expected useful life is \$13,000. The total operation and maintenance is \$60,000 per year. There are no estimated costs associated with purchase of services. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this action, which includes this ICR, under Docket ID number EPA-HQ-OAR-2002-0017. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attention: Desk Office for EPA*. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after June 11, 2008, a comment to OMB is best assured of having its full effect if OMB receives it by July 11,

2008. The final rule will respond to any OMB or public comments on the information collection requirements contained in these proposed amendments.

#### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses, as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule is estimated to impact a total of five sources, with one of the five facilities estimated to be small entity. We have estimated that small entity compliance costs, as assessed by the facilities' cost-to-sales ratio, are expected to be less than 3 percent of revenues. New sources are already prohibited from using the technology of this proposed rule by virtue of the 2003 Mercury Cell MACT's provisions; consequently, we did not estimate any impacts for new sources since this rulemaking would not impose any new requirements on them.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities.

We continue to be interested in the potential impacts of this proposed action on small entities and welcome comments on issues related to such impacts.

#### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. (**Note:** The term "enforceable duty" does not include duties and conditions in voluntary federal contracts for goods and services.) Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

*E. Executive Order 13132: Federalism*

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule does not impose any requirements on State and local governments. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed rule does not have tribal implications, as specified in Executive Order 13175. This proposed rule imposes no requirements on tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to Executive Order 13045

because it is based solely on technology performance.

*H. Executive Order 13211 (Energy Effects)*

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The

nationwide standards would reduce HAP emissions and thus decrease the amount of emissions to which all affected populations are exposed.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: May 30, 2008.

**Stephen L. Johnson,**  
*Administrator.*

For the reasons set forth in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 63—[AMENDED]**

1. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart IIIII—[AMENDED]**

2. Section 63.8182 is amended by revising paragraph (a) to read as follows:

**§ 63.8182 Am I subject to this subpart?**

(a) You are subject to this subpart if you own or operate a mercury cell chlor-alkali production facility or a mercury recovery facility at a mercury cell chlor-alkali plant.

\* \* \* \* \*

3. Section 63.8184 is amended by revising paragraph (a) introductory text to read as follows:

**§ 63.8184 What parts of my plant does this subpart cover?**

(a) This subpart applies to two types of affected sources at a mercury cell chlor-alkali plant: The mercury cell chlor-alkali production facility, as defined in § 63.8266, “What definitions apply to this subpart,” and the mercury recovery facility, as also defined in § 63.8266.

\* \* \* \* \*

4. Section 63.8186 is amended by revising paragraph (a) and adding paragraph (e) to read as follows:

**§ 63.8186 When do I have to comply with this subpart?**

(a) If you have an existing affected source, you must comply with the applicable provisions no later than the dates specified in paragraph (a)(1) of this section and in either paragraph (a)(2) or (3) of this section.

(1) You must comply with each emission limitation, work practice standard, and recordkeeping and reporting requirement in this subpart that applies to you no later than

December 19, 2006, with the exception of the requirements listed in paragraphs (a)(1)(i) through (4) of this section.

- (i) Section 63.8192(h) and (i);
- (ii) Section 63.8236(e) and (f);
- (iii) Section 63.8252(f); and
- (iv) Section 63.8254(e).

(2) If you were complying with the cell room monitoring program provisions in § 63.8192(g) on June 11, 2008 as an alternative to the work practice standards in § 63.8192(a) through (d), you must comply with the provisions in § 63.8192(h) and (i) no later than 6 months after publication of the final rule in the **Federal Register**. At the time that you are in compliance with § 63.8192(h) and (i), you will no longer be subject to the provisions of § 63.8192(g).

(3) If you were complying with the work practice standards in § 63.8192(a) through (d) on June 11, 2008, you must comply with the provisions in § 63.8192(h) and (i) no later than 2 years after publication of the final rule in the **Federal Register**. At the time that you are in compliance with § 63.8192(h) and (i), you will no longer be subject to the provisions of § 63.8192(a) through (d).

\* \* \* \* \*

(e) If you have a mercury recovery facility at a mercury cell chlor-alkali plant where the mercury cell chlor-alkali production facility ceased production of product chlorine, product caustic, and by-product hydrogen prior to the publication of the final rule in the **Federal Register**, you must comply with each emission limitation, work practice standard, and recordkeeping and reporting requirement in this subpart that applies to your mercury recovery unit by 1 year after the publication of the final rule in the **Federal Register**.

5. Section 63.8192 is amended by revising the introductory text; and adding paragraphs (h) and (i) to read as follows:

**§ 63.8192 What work practice standards must I meet?**

Prior to the applicable compliance date specified in § 63.8186(a)(2) or (3), you must meet the work practice requirements specified in paragraphs (a) through (f) of this section. As an alternative to the requirements specified in paragraphs (a) through (d) of this section, you may choose to comply with paragraph (g) of this section. After the applicable compliance date specified in § 63.8186(a)(2) or (3), you must meet the work practice requirements specified in paragraphs (e), (f), (h), and (i) of this section.

\* \* \* \* \*

(h) You must meet the work practice standards in Tables 1 through 4 to this

subpart and the associated recordkeeping requirements in Table 12 to this subpart. You must adhere to the response intervals specified in Tables 1 through 4 to this subpart at all times. Nonadherence to the intervals in Tables 1 through 4 to this subpart constitutes a deviation and must be documented and reported in the compliance report, as required by § 63.8254(b), with the date and time of the deviation, cause of the deviation, a description of the conditions, and time actual compliance was achieved. As provided in § 63.6(g), you may request to use an alternative to the work practice standards in Tables 1 through 4 to this subpart.

(i) In addition to the work practice standards in paragraph (h) of this section, you must institute a cell room monitoring program to continuously monitor the mercury vapor concentration in the upper portion of each cell room and to take corrective actions as quickly as possible when elevated mercury vapor levels are detected. You must prepare and submit to the Administrator a cell room monitoring plan containing the elements listed in Table 11 to this subpart and meet the requirements in paragraphs (i)(1) through (4) of this section.

(1) You must utilize a mercury monitoring system that meets the requirements of Table 8 to this subpart.

(2) You must establish action levels according to the requirements in paragraphs (i)(2)(i) through (iii) of this section. You must establish an initial action level after the compliance date specified in § 63.8186(a)(2) or (3), and you must re-establish an action level at least once every six months thereafter.

(i) You must measure and record the mercury concentration for at least 14 days and no more than 30 days using a system that meets the requirements of paragraph (i)(1) of this section. For the initial action level, this monitoring must begin on the applicable compliance date specified for your affected source in § 63.8186(a)(2) or (3).

(ii) Using the monitoring data collected according to paragraph (i)(2)(i) of this section, you must establish your action level at the 90th percentile of the data set.

(iii) You must submit your initial action level according to § 63.8252(f) and subsequent action levels according to § 63.8252(g).

(3) Beginning on the compliance date specified for your affected source in § 63.8186(a)(2) or (3), you must continuously monitor the mercury concentration in the cell room. Failure to monitor and record the data according to § 63.8256(e)(4)(iii) for 75

percent of the time in any 6-month period constitutes a deviation.

(4) If the average mercury concentration for any 1-hour period exceeds the currently applicable action level established according to paragraph (i)(2) of this section, you must meet the requirements in either paragraph (i)(4)(i) or (ii) of this section.

(i) If you determine that the cause of the elevated mercury concentration is an open electrolyzer, decomposer, or other maintenance activity, you must record the information specified in paragraphs (i)(4)(i)(A) through (C) of this section.

(A) A description of the maintenance activity resulting in elevated mercury concentration;

(B) The time the maintenance activity was initiated and completed; and

(C) A detailed explanation of how all the applicable requirements of Table 1 to this subpart were met during the maintenance activity.

(ii) If you determine that the cause of the elevated mercury concentration is not an open electrolyzer, decomposer, or other maintenance activity, you must follow the procedures specified in paragraphs (i)(4)(ii)(A) and (B) of this section until the mercury concentration falls below the action level. You must also keep all the associated records for these procedures as specified in Table 12 to this subpart. Nonadherence to the intervals in paragraphs (i)(4)(ii)(A) and (B) of this section constitutes a deviation and must be documented and reported in the compliance report, as required by § 63.8254(b).

(A) Within 1 hour of the time the action level was exceeded, you must conduct each inspection specified in Table 2 to this subpart, with the exception of the cell room floor and the pillars and beam inspections. You must correct any problem identified during these inspections in accordance with the requirements in Tables 2 and 3 to this subpart.

(B) If the Table 2 inspections and subsequent corrective actions do not reduce the mercury concentration below the action level, you must inspect all decomposers, hydrogen system piping up to the hydrogen header, and other potential locations of mercury vapor leaks using a technique specified in Table 6 to this subpart. If a mercury vapor leak is identified, you must take the appropriate action specified in Table 3 to this subpart.

6. Section 63.8230 is amended by revising paragraph (b) and by adding paragraph (c) to read as follows:

**§ 63.8230 By what date must I conduct performance tests or other initial compliance demonstrations?**

\* \* \* \* \*

(b) For the applicable work practice standards in § 63.8192(a) through (g), you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified for your affected source in § 63.8186(a)(1).

(c) For the applicable work practice standards in § 63.8192(e), (f), (h), and (i), you must demonstrate initial compliance within 60 calendar days after the applicable compliance date that is specified for your affected source in § 63.8186(a)(2) or (3).

7. Section 63.8236 is amended by revising paragraph (c) introductory text and by adding paragraphs (e) and (f) to read as follows:

**§ 63.8236 How do I demonstrate initial compliance with the emission limitations and work practice standards?**

\* \* \* \* \*

(c) For each affected source, you have demonstrated initial compliance with the applicable work practice standards in § 63.8192(a) through (g) if you comply with paragraphs (c)(1) through (7) of this section:

\* \* \* \* \*

(e) After the [date of publication of the final rule in the **Federal Register**], for each affected source, you have demonstrated initial compliance with the applicable work practice standards in § 63.8192(e), (f), (h), and (i) if you comply with paragraphs (e)(1) through (4) of this section:

(1) You certify in your Revised Work Practice Notification of Compliance Status that you are operating according to the work practice standards in § 63.8192(h).

(2) You have submitted your cell room monitoring plan as part of your Revised Work Practice Notification of Compliance Status and you certify in your Revised Work Practice Notification of Compliance Status that you are operating according to the continuous cell room monitoring program under § 63.8192(i) and that you have established your initial action level according to § 63.8192(i)(2).

(3) You have re-submitted your washdown plan as part of your Revised Work Practice Notification of Compliance Status and you re-certify in your Revised Work Practice Notification of Compliance Status that you are operating according to your washdown plan.

(4) You have re-submitted records of the mass of virgin mercury added to cells for the 5 years preceding December

19, 2006, as part of your Revised Work Practice Notification of Compliance Status.

(f) You must submit the Revised Work Practice Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8252(f).

8. Section 63.8242 is amended by revising paragraph (a)(2) to read as follows:

**§ 63.8242 What are the installation, operation, and maintenance requirements for my continuous monitoring systems?**

(a) \* \* \*

(2) Each mercury continuous emissions monitor analyzer must have a detector with the capability to detect a mercury concentration at or below 0.5 times the mercury concentration level measured during the performance test conducted according to § 63.8232, or 0.1 µg/m<sup>3</sup>, whichever is greater.

\* \* \* \* \*

9. Section 63.8246 is amended by revising the first sentence of paragraph (b)(1) introductory text to read as follows:

**§ 63.8246 How do I demonstrate continuous compliance with the emission limitations and work practice standards?**

\* \* \* \* \*

(b) \* \* \* (1) For each mercury thermal recovery unit vent, you must demonstrate continuous compliance with the applicable emission limit specified in § 63.8190(a)(3) by maintaining the outlet mercury daily-average concentration no higher than the applicable limit. \* \* \*

\* \* \* \* \*

10. Section 63.8252 is amended by adding paragraphs (f) and (g) to read as follows:

**§ 63.8252 What notifications must I submit and when?**

\* \* \* \* \*

(f) You must submit a Revised Work Practice Notification of Compliance Status according to paragraphs (f)(1) and (2) of this section.

(1) You must submit a Revised Work Practice Notification of Compliance Status before the close of business on the date 60 days after the applicable compliance date in date § 63.8186(a)(2) or (3). The Revised Work Practice Notification of Compliance Status must contain the items in paragraphs (f)(1)(i) through (iii) of this section:

(i) A certification that you are operating according to the work practice standards in § 63.8192(h).

(ii) Your cell room monitoring plan, including your initial action level

determined in accordance with § 63.8192(i)(2), and a certification that you are operating according to the continuous cell room monitoring program under § 63.8192(i).

(iii) Your washdown plan, and a certification that you are operating according to your washdown plan under § 63.8192(e).

(2) Records of the mass of virgin mercury added to cells for the 5 years preceding December 19, 2006.

(g) You must submit subsequent action levels determined in accordance with § 63.8192(i)(2), along with the supporting data used to establish the action level, within 30 calendar days after completion of data collection.

11. Section 63.8254 is amended by revising paragraph (b)(7) introductory text to read as follows:

**§ 63.8254 What reports must I submit and when?**

\* \* \* \* \*

(b) \* \* \*

(7) For each deviation from the requirements for work practice standards in Tables 1 through 4 to this subpart that occurs at an affected source (including deviations where the response intervals were not adhered to as described in § 63.8192(b)), each deviation from the cell room monitoring program monitoring and data recording requirements in § 63.8192(i)(3), and each deviation from the response intervals required by § 63.8192(i)(4) when an action level is exceeded, the compliance report must contain the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(7)(i) and (ii) of this section. This includes periods of startup, shutdown, and malfunction.

\* \* \* \* \*

12. Section 63.8256 is amended by revising paragraph (c) introductory text and adding paragraph (e) to read as follows:

**§ 63.8256 What records must I keep?**

\* \* \* \* \*

(c) Records associated with the work practice standards that must be kept prior to the applicable compliance date in § 63.8186(a)(2) or (3).

\* \* \* \* \*

(e) Records associated with the work practice standards that must be kept after the applicable compliance date in § 63.8186(a)(2) or (3).

(1) You must keep the records specified in paragraphs (e)(1)(i) and (ii) of this section.

(i) A weekly record certifying that you have complied with the work practice standards in Tables 1 through 4 to this subpart. This record must, at minimum,



list each general requirement specified in paragraphs (e)(1)(i)(A) through (D) of this section. Figure 1 to this subpart provides an example of this record.

(A) The design, operation, and maintenance requirements in Table 1 to this subpart;

(B) The required inspections in Table 2 to this subpart;

(C) The required actions for liquid mercury spills and accumulations and hydrogen and mercury vapor leaks in Table 3 to this subpart; and

(D) The requirements for mercury liquid collection in Table 4 to this subpart.

(ii) The records specified in Table 12 to this subpart related to mercury and hydrogen leaks.

(2) You must maintain a copy of your current washdown plan and records of when each washdown occurs.

(3) You must maintain records of the mass of virgin mercury added to cells for each reporting period.

(4) You must keep your current cell room monitoring plan and the records specified in paragraphs (e)(4)(i) through (vi) of this section.

(i) Records of the monitoring conducted in accordance with § 63.8192(i)(2)(i) to establish your action levels, and records demonstrating the development of these action levels.

(ii) During each period that you are gathering cell room monitoring data in accordance with the requirements of

§ 63.8192(i)(2)(i), records specified in Table 9 to this subpart.

(iii) Records of the cell room mercury concentration monitoring data collected.

(iv) Instances when the action level is exceeded.

(v) Records specified in § 63.8192(i)(4)(i) for maintenance activities that cause the mercury vapor concentration to exceed the action level.

(vi) Records of all inspections and corrective actions taken in response to a non-maintenance related situation in which the mercury vapor concentration exceeds the action level as specified in Table 12 of this subpart.

13. Section 63.8266 is amended by revising the definitions of “Mercury cell chlor-alkali plant” and “Mercury recovery facility” to read as follows:

**§ 63.8266 What definitions apply to this subpart?**

\* \* \* \* \*

*Mercury cell chlor-alkali plant* means all contiguous or adjoining property that is under common control, where a mercury cell chlor-alkali production facility and/or a mercury recovery facility is located. A mercury cell chlor-alkali plant includes a mercury recovery facility at a plant where the mercury cell chlor-alkali production facility ceases production.

\* \* \* \* \*

*Mercury recovery facility* means an affected source consisting of all processes and associated operations

needed for mercury recovery from wastes generated by a mercury cell chlor-alkali plant.

\* \* \* \* \*

14. Subpart IIII of Part 63 is amended by revising the table heading for table 5 to read as follows:

**Table 5 to Subpart IIII—Required Elements of Floor-Level Mercury Vapor Measurement and Cell Room Monitoring Plans Prior to the Applicable Compliance Date Specified in § 63.8186(a)(2) or (3)**

15. Subpart IIII of Part 63 is amended by revising the introductory text of table 9 to read as follows:

**Table 9 To Subpart IIII of Part 63—Required Records for Work Practice Standards**

As stated in § 63.8256(c), you must keep the records (related to the work practice standards) specified in the following table prior to the applicable compliance date specified in § 63.8186(a)(2) or (3). After the applicable compliance date specified in § 63.8186(a)(2) or (3), you must keep the records (related to the work practice standards) specified in the following table during the period when you are collecting cell room monitoring data in accordance with § 63.8192(i)(2)(i) to establish your action level:

16. Subpart IIII of Part 63 is amended by adding table 11 to read as follows:

**TABLE 11 TO SUBPART IIII.—REQUIRED ELEMENTS CELL ROOM MONITORING PLANS AFTER THE APPLICABLE COMPLIANCE DATE SPECIFIED IN § 63.8186(a)(2) OR (3)**

Your Cell Room Monitoring Plan required by § 63.8192(i) must contain the elements listed in the following table:

You must specify in your cell room monitoring plan * * *	Additional requirements
1. Details of your mercury monitoring system.	
2. How representative sampling will be conducted .....	Include some pre-plan measurements to demonstrate the profile of mercury concentration in the cell room and how the selected sampling locations ensure conducted representativeness.
3. Quality assurance/quality control procedures for your mercury monitoring system.	Include a description of how you will keep records or other means to demonstrate that the system is operating properly.
4. Your current action level .....	Include the background data used to establish your current level. Records of previous action levels must be kept for 5 years in accordance with § 63.8258, but are not required to be included as part of your cell room monitoring plan.

17. Subpart IIII of Part 63 is amended by adding table 12 to read as follows:

**TABLE 12 TO SUBPART IIII OF PART 63.—REQUIRED RECORDS FOR WORK PRACTICE STANDARDS AFTER THE APPLICABLE COMPLIANCE DATE SPECIFIED IN § 63.8186(a)(2) OR (3)**

As stated in § 63.8256(e)(1), you must keep the records (related to the work practice standards) specified in the following table:

For each * * *	You must record the following information * * *
1. Liquid mercury spill or accumulation identified during an inspection required by Table 2 to this subpart or at any other time.	a. Location of the liquid mercury spill or accumulation. b. Method you use to clean up the liquid mercury spill or accumulation. c. Date and time when you clean up the liquid mercury spill or accumulation.

TABLE 12 TO SUBPART IIIII OF PART 63.—REQUIRED RECORDS FOR WORK PRACTICE STANDARDS AFTER THE APPLICABLE COMPLIANCE DATE SPECIFIED IN § 63.8186(A)(2) OR (3)—Continued

As stated in § 63.8256(e)(1), you must keep the records (related to the work practice standards) specified in the following table:

For each * * *	You must record the following information * * *
2. Liquid mercury leak or hydrogen leak identified during an inspection required by Table 2 to this subpart or at any other time.	<p>d. Source of the liquid mercury spill or accumulation.</p> <p>e. If the source of the liquid mercury spill or accumulation is not identified, the time when you reinspect the area.</p> <p>a. Location of the leak.</p> <p>b. Date and time you identify the leak.</p> <p>c. If the leak is a liquid mercury leak, the date and time that you successfully contain the dripping liquid mercury.</p> <p>d. Date and time you successfully stop the leak and repair the leaking equipment.</p>

18. Subpart IIIII of Part 63 is amended by adding figure 1 as follows:

**Figure 1. Example Record Certifying Compliance with Work Practice Standards**

Certification of Compliance with Work Practices Standards  
§63.8256(e)(1)(i)

I hereby certify, that the [COMPANY NAME] mercury cell chlor-alkali facility in [LOCATION] has complied with each of the following work practice standards for the week of [DATE].

The design, operation, and maintenance requirements in Table 1 to 40 CFR part 63, subpart IIIII.

☐

The required inspections in Table 2 to 40 CFR part 63, subpart IIIII.

☐

The required actions for liquid mercury spills and accumulations and hydrogen and mercury vapor leaks in Table 3 to 40 CFR part 63, subpart IIIII.

☐

The requirements for mercury liquid collection in Table 4 to 40 CFR part 63, subpart IIIII.

☐

\_\_\_\_\_  
COMPANY OFFICIAL

\_\_\_\_\_  
DATE



# Federal Register

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**Wednesday,  
June 11, 2008**

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## **Part VI**

## **The President**

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**Executive Order 13465—Amending  
Executive Order 12989, as Amended  
Presidential Determination No. 2008–20 of  
June 4, 2008—Suspension of Limitations  
Under the Jerusalem Embassy Act**



# Presidential Documents

**Title 3—****Executive Order 13465 of June 6, 2008****The President****Amending Executive Order 12989, as Amended**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including subsection 121(a) of title 40 and section 301 of title 3, United States Code, and in order to take further steps to promote economy and efficiency in Federal Government procurement, it is hereby ordered as follows:

**Section 1.** Executive Order 12989 of February 13, 1996, as amended, is further amended:

(a) by striking the title and inserting in lieu thereof “Economy and Efficiency in Government Procurement Through Compliance with Certain Immigration and Nationality Act Provisions and Use of an Electronic Employment Eligibility Verification System”; and

(b) by striking the material that follows the title and precedes section 1 of the order and inserting in lieu thereof the following:

“This order is designed to promote economy and efficiency in Federal Government procurement. Stability and dependability are important elements of economy and efficiency. A contractor whose workforce is less stable will be less likely to produce goods and services economically and efficiently than a contractor whose workforce is more stable. It is the policy of the executive branch to enforce fully the immigration laws of the United States, including the detection and removal of illegal aliens and the imposition of legal sanctions against employers that hire illegal aliens. Because of the worksite enforcement policy of the United States and the underlying obligation of the executive branch to enforce the immigration laws, contractors that employ illegal aliens cannot rely on the continuing availability and service of those illegal workers, and such contractors inevitably will have a less stable and less dependable workforce than contractors that do not employ such persons. Where a contractor assigns illegal aliens to work on Federal contracts, the enforcement of Federal immigration laws imposes a direct risk of disruption, delay, and increased expense in Federal contracting. Such contractors are less dependable procurement sources, even if they do not knowingly hire or knowingly continue to employ unauthorized workers.

“Contractors that adopt rigorous employment eligibility confirmation policies are much less likely to face immigration enforcement actions, because they are less likely to employ unauthorized workers, and they are therefore generally more efficient and dependable procurement sources than contractors that do not employ the best available measures to verify the work eligibility of their workforce. It is the policy of the executive branch to use an electronic employment verification system because, among other reasons, it provides the best available means to confirm the identity and work eligibility of all employees that join the Federal workforce. Private employers that choose to contract with the Federal Government should meet the same standard.

“I find, therefore, that adherence to the general policy of contracting only with providers that do not knowingly employ unauthorized alien workers and that have agreed to utilize an electronic employment verification system designated by the Secretary of Homeland Security to confirm the employment eligibility of their workforce will promote economy and efficiency in Federal procurement.

“NOW, THEREFORE, to ensure the economical and efficient administration and completion of Federal Government contracts, and by the authority vested in me as President by the Constitution and the laws of the United States of America, including subsection 121(a) of title 40 and section 301 of title 3, United States Code, it is hereby ordered as follows:”.

**Sec. 2.** Section 1 of Executive Order 12989, as amended, is further amended by:

(a) striking the last sentence in subsection 1(a); and

(b) striking subsection (b) and inserting in lieu thereof the following new subsections:

“(b) It is the policy of the executive branch in procuring goods and services that, to ensure the economical and efficient administration and completion of Federal Government contracts, contracting agencies may not enter into contracts with employers that do not use the best available means to confirm the work authorization of their workforce.

“(c) It is the policy of the executive branch to enforce fully the antidiscrimination provisions of the INA. Nothing in this order relieves employers of antidiscrimination obligations under section 274B of the INA (8 U.S.C. 1324b) or any other law.

“(d) All discretion under this order shall be exercised consistent with the policies set forth in this section.”.

**Sec. 3.** Section 5 of Executive Order 12989, as amended, is further amended to read as follows:

“**Sec. 5.** (a) Executive departments and agencies that enter into contracts shall require, as a condition of each contract, that the contractor agree to use an electronic employment eligibility verification system designated by the Secretary of Homeland Security to verify the employment eligibility of: (i) all persons hired during the contract term by the contractor to perform employment duties within the United States; and (ii) all persons assigned by the contractor to perform work within the United States on the Federal contract.

“(b) The Secretary of Homeland Security:

“(i) shall administer, maintain, and modify as necessary and appropriate the electronic employment eligibility verification system designated by the Secretary under subsection (a) of this section; and

“(ii) may establish with respect to such electronic employment verification system:

“(A) terms and conditions for use of the system; and

“(B) procedures for monitoring the use, failure to use, or improper use of the system.

“(c) The Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration shall amend the Federal Acquisition Regulation to the extent necessary and appropriate to implement the debarment responsibility, the employment eligibility verification responsibility, and other related responsibilities assigned to heads of departments and agencies under this order.

“(d) Except to the extent otherwise specified by law or this order, the Secretary of Homeland Security and the Attorney General:

“(i) shall administer and enforce this order; and

“(ii) may, after consultation to the extent appropriate with the Secretary of Defense, the Secretary of Labor, the Administrator of General Services, the Administrator of the National Aeronautics and Space Administration, the Administrator for Federal Procurement Policy, and the heads of such other departments or agencies as may be appropriate, issue such rules, regulations, or orders, or establish such requirements, as may be necessary and appropriate to implement this order.”.

**Sec. 4.** Section 7 of Executive Order 12989, as amended, is amended by striking “respective agencies” and inserting in lieu thereof “respective departments or agencies”.

**Sec. 5.** Section 8 of Executive Order 12989, as amended, is amended to read as follows:

“**Sec. 8.** (a) This order shall be implemented in a manner intended to minimize the burden on participants in the Federal procurement process.

“(b) This order shall be implemented in a manner consistent with the protection of intelligence and law enforcement sources, methods, and activities from unauthorized disclosure.”.

**Sec. 6.** Section 9 of Executive Order 12989, as amended, is amended to read as follows:

“**Sec. 9.** (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

“(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

“(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies or entities, its officers, employees, or agents, or any other person.”.

**Sec. 7.** This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,  
*June 6, 2008.*



## Presidential Documents

**Presidential Determination No. 2008–20 of June 4, 2008**

### **Suspension of Limitations Under the Jerusalem Embassy Act**

#### **Memorandum for the Secretary of State**

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the “Act”), I hereby determine that it is necessary, in order to protect the national security interests of the United States, to suspend for a period of 6 months the limitations set forth in sections 3(b) and 7(b) of the Act. My Administration remains committed to beginning the process of moving our Embassy to Jerusalem.

You are hereby authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the **Federal Register**.

This suspension shall take effect after transmission of this determination and report to the Congress.



THE WHITE HOUSE,  
*Washington, June 4, 2008.*

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**LIST OF PUBLIC LAWS**

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GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.

**H.R. 1195/P.L. 110-244**

SAFETEA-LU Technical Corrections Act of 2008 (June 6, 2008; 122 Stat. 1572)

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